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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT
Fifth periodic report

ECUADOR*

[22 December 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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COMBINED FIFTH AND SIXTH PERIODIC REPORTS OF ECUADOR ON IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS[1]

Members of the Working Group on Civil and Political Rights of the Public Coordination Committee for Human Rights
(In alphabetical order)

Public institutions

Institution	Acronym
Attorney-General's Office	MP
Constitutional Court	TC
Council for the Development of the Nationalities and Peoples of Ecuador	CODENPE
Department of Migration	DNM
Ministry of Defence	MD
Ministry of Economics and Finance	MEF
Ministry of Education	ME
Ministry of External Relations, Trade and Integration	MRE
Ministry of Labour and Human Resources	MT
Ministry of Public Health	MSP
Ministry of Social Welfare	MBS
Ministry of the Environment	MA
Ministry of the Interior and the Police	MG
National Congress Commission on Human Rights	
National Council for Children and Adolescents	CNNA
National Council for Women	CONAMU
National Council of the Judiciary	
National Council on Disabilities	CONADIS
National Court of Police Justice	
National Department of Civil Registration	DNRC
National Statistics and Census Institute	INEC
Office of the Ombudsman	
Public Prosecutor's Office	PGE
Supreme Court of Justice	CSJ
Supreme Electoral Tribunal	TSE

[1] Prepared with the participation of the member institutions of the Working Group on Civil and Political Rights of the Public Coordination Committee for Human Rights, drafted and organized by the Department of Human Rights and Social Affairs of the Ministry of External Relations, Trade and Integration.

Institution	Acronym
Technical Secretariat of the Social Front	
Under-secretariat of Police	

Civil society organizations invited

Amnesty International	
Auditoría Democrática Andina (Andean Democratic Audit)	
Coordinator for Youth Policy	
Country Plan	
Democracy and Development	
Ecuadorian Organization of Lesbian Women	
Ecumenical Human Rights Commission	CEDHU
Equity Foundation	
Fundación Nuestros Derechos (Our Rights Foundation)	
Fundación para la Rehabilitación Integral de Víctimas de la Violencia (Foundation for the Full Rehabilitation of Victims of Violence)	PRIVA
Grupo Derechos Humanos (Human Rights Group)	GEDHU
Human Rights Regional Advisory Foundation	INREDH
International Prisons Observatory	
International Prisons Observatory	
Latin American and Caribbean Committee for the Defense of Women's Rights	CLADEM
Latin American Institute for the Prevention of Crime and Treatment of Offenders	ILANUD
Peace and Justice Service	SERPAJ

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COMBINED FIFTH AND SIXTH PERIODIC REPORTS BY ECUADOR ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

I. INTRODUCTION

1. The Government of Ecuador is pleased to submit to the Human Rights Committee its combined fifth and sixth periodic reports, on the implementation of the International Covenant on Civil and Political Rights. They cover the periods 1996-2001 and 2001-2006, in conformity with the State party's express request to the Committee in February 2006 which was duly accepted by the Committee, both procedures being carried out via the Mission of Ecuador to the United Nations in Geneva.

2. The reports take account of all the observations and recommendations made by the Committee when considering the Fourth Periodic Report of Ecuador, on 14 July 1998, and set out in document number CCPR/C/79/Add.92 of 18 August 1998.

3. The combined reports were drafted with the active participation and contributions of the State institutions and civil society organizations which are members of the **Working Group on Civil and Political Rights**, set up in 2002 under the umbrella of the inter-ministerial **Public Coordination Committee for Human Rights** to comply with the State party's human rights obligations.

4. Regarding paragraph 23 of the Committee's Concluding Observations, when drafting the reports, the Working Group took account of the guidelines regarding the reports from States parties, set out in document CCPR/C/66/GUI/Rev. 2 and, as suggested in paragraph 22 of those concluding observations, they were disseminated widely by the Ecuadorian Ministry of External Relations, which acts as Permanent Secretariat of the above Committee, via its website: www.mmrree.gov.ec/politicaexterior/politicamultilateral/ddhh and in a number of training workshops, held for State officials and representatives of civil society, between 2003 and 2005.

II. GENERAL POLITICAL AND ECONOMIC OVERVIEW

5. The Republic of Ecuador is defined in the Constitution as a sovereign, unitary, democratic, multicultural and multiethnic social State under the rule of law. According to the latest Population Census of 2001, it has a population of 12 156 608, of which 50.5 per cent are women (6 138 255). Over 3 million women live in the Costa and Insular regions, 2.5 million in Sierra and over 250,000 in Amazonia; 61.1 per cent of the population is concentrated in urban areas, where the female population index reaches 104.9 per cent. IN the 0 to 14 age group, 49.3 per cent are female, with 52.5 per cent women in the over-65 age group.

6. According to population projections made in October 2003 by the National Statistics and Census Institute (INEC) and the Economic Commission for Latin America and the Caribbean (CEPAL), the population in 2005 was projected to be 6 684 639 women and 6 723 631 men. The average fertility rate declined to 3.4 in 2001, with 2.9 in urban areas and 4.4 in rural areas. Three out of ten Ecuadorians are young people. Of the youth population, the largest age group is between 19 and 24 years old, at 41.65 per cent, with similar percentages of males and females.

7. The majority racial groups are mestizo and indigenous, with smaller percentages of whites and people of African descent. According to 2001 census data, there were 271 371 blacks or mulattos. Afro-Ecuadorian organizations estimate that they number between 900 000 and 1.2 million[2]. The indigenous population is around 830 418, of which over 50 per cent are women. Data from the same 2001 census indicate that the mestizo population numbers 9 411 890 and the white population 1 271 051. Data from ECLAC indicate that the indigenous population numbers 95.08 men per 100 women, while in the Afro-Ecuadorian population, the ratio is 106.7 men per 100 women.

8. Nationally, 21.3 per cent of households are headed by women, according to 2003 data. The basic needs of 52 per cent of persons speaking an indigenous language or living in households where native languages are spoken are not being met.

9. As established in the Political Constitution, the Government of Ecuador is a republic, with an elected president and representatives, which is alternating, participatory and decentralized administratively through local, provincial and cantonal governments. However, over the past eight years, two Presidents have been unable to complete their terms as a result of popular uprisings. In both cases, the office of President was assumed by their Vice-Presidents. The process of achieving independence of State functions is ongoing, especially the depoliticization of the Judiciary. In that regard, the citizens recently held an unprecedented public referendum, with international and national oversight, to designate the members of the Supreme Court of Justice currently in office.

10. The political and financial crisis of 1999-2000 had a profound effect on the country's economic and social development. Indicators show that the poverty rate increased and the unemployment rate as well as the rate of migration to urban centres and abroad (around 700 000 persons in 2003)[3] were high. In 2000, after one of the most serious drops in productive and banking activity, the Government reformed the monetary system, adopting the American dollar as the sole official currency in use (rate: 25 000 sucres/dollar). In 2001, Ecuador showed signs of stabilization in economic activity, including a downward trend in the unemployment rate, while remittances from Ecuadorian migrants that year amounted to $1.43 billion, higher than the foreign direct investment received the previous year.

11. During 2002, the performance of the national economy was moderate in almost all productive sectors, with notable growth in the construction sector and investment in the oil sector. Beginning in 2000, budgetary investment in social expenditure doubled from $690 million to $1.5 billion in 2002 and to $2.5 billion in 2006, due to a national agreement between the Government and civil society known as the Fiscal Policy Observatory, intended to ensure public accountability in the formulation and approval of the State budget.

12. Beginning in 2003, macroeconomic indices have been favourable but the people's economic situation has been difficult because dollarized inflation means a cost-of-living

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[2] STFS, SISPAE, Racism and racial discrimination in Ecuador 2005. Quito, October 2005.

[3] Data from the National Office for Migration.

increase. The fiscal deficit continues to be a structural problem. Nor have the budgetary minimums established in the Constitution for the education and health sectors been reached, due to external debt commitments, despite the increase in social investment by the State.

13. At the national level, the poverty rate according to the income method rose from 56 per cent in 1995 to reach its highest level of 69 per cent in 2000[4]. It later declined and stabilized at 60 per cent in 2003. According to these sources, the unrecovered cost of the crisis would be about 4 per cent in terms of poverty. The change in extreme poverty is more pronounced and its unrecovered cost is 13 per cent. In other words, the poorest of the poor have seen their situation worsen irreversibly.

14. This political and economic situation led to a gradual reduction of the middle classes, with increasing levels of poverty and extreme poverty, which in turn spurred a flow of outward migration, unprecedented in the country's history and still ongoing today.

15. The social indicators show that the crisis of 1999 and 2000 affected the most vulnerable sectors. This economic crisis led to a slowdown in production, industry, trade and construction. The open economic model fostered the production of exportable, mainly primary goods, based on natural advantages which, together with an outmoded style of industrialization based on capital-intensive technology, had a limited effect on job-creation in the economy.

16. However, over the past three years, the economy has grown and social spending has increased, owing to three basic factors: the renegotiation of the foreign debt, reducing it from 11.3 per cent to 10.6 per cent; the construction of the second oil pipeline and the creation of the Stabilization Fund for Investment and Debt Reduction (FEIREP); and the permanent increase in tax revenue, owing to the efficient and transparent management of the Internal Revenue Service. This also resulted in a healthier State budget. While for the year 2000 revenue was a mere 2.018 billion dollars, representing 45.8 per cent of the total budget, revenue for 2006 was 5.758 billion dollars, accounting for 67.9 per cent of the total State budget.[5]

17. Another difficulty that the country has been facing since 2000 is the substantial influx of migrants and refugees from Colombia and Peru, as a result of the internal armed conflict in the former and the economic crisis in the latter.

III. INFORMATION ON ARTICLES 1 TO 27 OF THE COVENANT

A. Article 1

18. Regarding this article, since the present Constitution of the Republic of Ecuador entered force on 10 August 1998, the principle of free determination of the peoples has been consolidated in domestic law, with the incorporation of the "Collective Rights" guaranteeing protection and enjoyment of the rights of indigenous and Afro-Ecuadorian peoples living in the

[4] Integrated Household Survey System, 2000.

[5] Data from the Central Bank and Ministry of Economy and Finance.

territory of the country (articles 83, 84 and 85 of the Constitution). Likewise, since 15 May 1998, Ecuador has been a State party to Convention No. 169 of the International Labour Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries, 1989.

19. Article 1 of Title 1, concerning Fundamental Principles, defines Ecuador as "a sovereign, unitary, independent, democratic, multicultural and multiethnic social State under the rule of law".

20. Finally, the Constitution confirms the active participation of the indigenous and black or Afro-Ecuadorian population in the political and social field. Some progress has been made in involving that population in the political, economic and social development of the country, which we will address under the section on article 27 of these reports.

B. Article 2

1. Safeguarding and respect of rights

21. According to article 16 of the Constitution of the Republic of Ecuador,"the highest duty of the State is to respect and ensure respect for human rights in accordance with the Constitution." This article ratifies the State's undertaking to safeguard the same human rights as those recognized in the Covenant.

a) Article 2.1 of the Covenant

22. Article 23, paragraph 3 of the Constitution establishes the right to equality before the law: "All persons shall be considered equal and shall enjoy the same rights, freedoms and opportunities, without discrimination on grounds of birth, age, sex, ethnic group, colour, social background, language, religion, political affiliation, economic status, sexual orientation, health, disability or difference of any kind". By including a ban on discrimination on these grounds that were not explicitly mentioned in the previous Constitution, the scope is broadened of the protection of the human rights of vulnerable groups. Furthermore, with the addition of the phrase "or difference of any other kind", the Constitution complies with the requirements of the international human rights treaties, particularly the International Covenant of Civil and Political Rights (article 2.1) which prohibits discrimination "without distinction of any kind".

23. Regarding article 2, paragraph 1 of the Covenant, the Ecuadorian State has broadened the scope of the non-discrimination clause to include sectors of society regarded as vulnerable, which has helped to strengthen civil society organizations involved in activities promoting and defending the human rights of such groups.

24. Article 13 of the Constitution provides that aliens enjoy the same rights as Ecuadorians, within the limits laid down by the Constitution and law. Information on the protection and exercise of aliens' human rights is given in the sections on articles 13, 16 and 24 of these combined reports.

25. As stated in the previous report, to comply in practice with the non-discrimination clause of article 2.1 of the Covenant, the Ecuadorian Government, together with the civil-society

organizations, has discussed and approved **Ecuador's National Human Rights Plan**, adopted as a State policy in June 1998. To implement this Government programme, Operational Action Plans were devised and approved, with the participation of all the social players concerned, for sexual minorities, prisoners, consumers, migrants, aliens, refugees and stateless persons, education, older people, Afro-Ecuadorians and young people, which are being implemented, since 2003, under the leadership of the **Standing Committee on the Monitoring of Ecuador's Human Rights Plan**, a joint body composed of representatives of the State and civil society, set up in November 1989.

b) Article 2.2 of the Covenant

Nature and scope of international human rights law in Ecuador's domestic legislation

26. The present Constitution of the Republic of 1998 introduced fundamental principles for enacting the rights recognized in the Covenant in domestic law.

27. Ecuador recognizes that "the norms contained in international treaties and conventions, once promulgated in the Official Gazette, shall form part of the domestic legal order and shall take precedence over laws and other norms of a lower rank" (article 163 of Ecuador's Constitution).

28. Article 19 of the Constitution provides that: "The rights and guarantees laid down in the Constitution and in international instruments do not exclude others intrinsic to the human person and necessary for his or her psychological and physical development."

29. Article 18 reads: "The rights and guarantees laid down in this Constitution and in the international instruments in force shall be directly and immediately applicable before any judge, court or authority. [...] The absence of a law shall not serve to justify violation of or disregard for the rights laid down in the Constitution, to desist from legal action against such violation or to deny recognition of such rights."

30. These provisions establish the supremacy of the Constitution over any other legal provision, the obligation for domestic laws to reflect the content of the Constitution, and their invalidity if they are contradiction with it. Article 273 of the Constitution states that "The courts, tribunals, judges and administrative authorities shall apply the relevant provisions of the Constitution, even if not expressly invoked by the party concerned".

31. Under article 274 of the Constitution, any judge or court may declare inapplicable any legal norm that runs counter to the provisions of the Constitution or international treaties or conventions, which considerably broadens the opportunities to protect individual rights, in specific cases, where legal norms run counter to the provisions of the Constitution or international treaties, thereby supporting the action of judges in this area and granting equal rank to relevant international conventions. In this way, the Constitution acknowledges that international and domestic laws are part of a single legal system. Judges, prosecutors and officials in general are required to be familiar with the content and scope of international law and to apply it in the domestic context.

32. Articles 20, 21 and 22 of the Constitution establish the right to remedy for violations of the rights enshrined therein.

33. In practice, the State still faces difficulties in directly applying international standards, particularly owing to insufficient training and conviction of justice officials and lawyers for the application of international human rights law.

2. Human rights dissemination and training programmes in Ecuador

34. In line with the Committee's recommendation, in paragraph 21 of the observations on the Fourth Periodic Report, the State is making targeted efforts to train Government officials in human rights. The obligation of the Ecuadorian State to promote the teaching of human rights is enshrined in article 66 of the Constitution, which provides that:

> "Education, based on ethnic, pluralistic, democratic, humanist and scientific principles, shall promote respect for human rights, foster critical thinking, promote civic responsibility, provide skills for efficiency in the workplace and production, stimulate creativity and the full development of the personality and the special skills of each person, and encourage multiculturalism, solidarity and peace."

35. Since 1993 the Ecuadorian State has promoted the teaching of human rights in the country, particularly in the professional training of law-enforcement personnel, both civilian and military.

3. Human rights training programmes for police personnel

36. Among the human rights training programmes, the National Police has set up within its programme of studies a chair in human rights, in the Police Officers and Ranks Training Academy, Officers Training Academy, the Advanced Training Academy, the Specialist Academy, the Headquarters Academy, as a vertical and horizontal human rights theme in the higher education centres and as an essential requirement for promotion to the upper ranks of the police hierarchy.

37. The Ecuadorian State has worked closely with civil society on training in human rights. Human rights organizations, in coordination with the National Police, have begun human rights education programmes for police personnel which have raised awareness of human rights, particularly civil and political rights.

38. One of the most significant programmes was that undertaken by the Ecuador Centre for Multidisciplinary Study and Research (CEIME), which from 1994 on has promoted human rights training for staff at all levels in the National Police. The central elements in the training have included the prohibition of torture and ill-treatment, investigation procedures, and support for victims of domestic violence. Some 16 192 police officers have been trained each year on these programmes.

4. Human rights training programmes for the armed forces

39. In recent years the Ecuadorian armed forces have also implemented, in the study programmes for officers and rank and file, fundamental doctrines, principles and concepts for carrying out their mission, subject to respect for human rights both internally and externally.

40. Under the agreement signed in October 1993 between the Ministry of Defence, the Ministry of Foreign Affairs, the Latin American Association for Human Rights (ALDHU) and the United Nations Development Programme (UNDP), a programme on training in human rights for members of the Ecuadorian armed forces was launched[6], with the fundamental objective of helping to strengthen the role of the armed forces as guarantors of the rule of law and establishing a forum for civilian-military dialogue with regard to democracy, security and human rights.

41. The first phase of the programme, from 1993 to 1996, trained 6 500 members of the armed forces, mainly from the army, who took part in educational activities, incorporating human rights in professional military training. The second phase of the programme, from 1996 to 1997, implemented an emergency plan for human rights training for 8 000 members of the armed forces; 360 members of the air force and navy were trained in this phase. In February 1997, the United Nations Centre for Human Rights conducted an evaluation of the programme, which served as a basis for the third phase. The third phase, from 1997 to 1999, included a diploma course in human rights and security conducted by the Latin American Faculty of Social Sciences (FLACSO - Ecuador); training was given to 12 military professionals who became human rights instructors in armed forces training centres.

42. The programme has helped to change the military's view of human rights, which it initially regarded as a subject area of no concern to the armed forces.

43. Significant changes have taken place in the military in terms of regulations, in particular in the treatment of the rank and file and personnel performing military service. Channels have been established for military personnel to submit complaints of human rights violations and specific provision has been made for covering human rights in the regular training of the civilian and military personnel of the armed forces.

5. Training programme in the rights of aliens, refugees, stateless and displaced persons

44. The Ecuadorian State, with the support of the United Nations High Commissioner for Refugees, provided special training for personnel of the National Police and armed forces intended specifically to promote understanding of international and domestic legislation on the rights of aliens, refugees, and stateless and displaced persons. The programme lasted two years (2000-2002).

45. The programme targeted migration police authorities and border military units and the Office of the Ombudsman, at the national and provincial levels, journalists and teachers, as well as civil society and human rights organizations active in this field. The programme conducted seven

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[6] Source: ALDHU, February 2003.

workshops at Cayame, Azogues, Esmeraldas, Cuenca, Coca, Quito, Guayaquil and Santo Domingo de los Colorados. The programme trained some 2 000 people.

6. Education and human rights in the Ecuador National Human Rights Plan

46. As already mentioned in paragraph 25 of these reports, in 1998 the State adopted the Ecuador National Human Rights Plan[7], which takes as a cross-cutting theme education in and for human rights. In the part relating to the training of staff responsible for implementation of the law, the National Plan provides:

> "Article 33. Provide an incentive for members of the armed forces and National Police to take human rights courses under study programmes set forth in the various agreements signed between the management organs of the various law enforcement bodies and specialized institutions."

47. The United Nations High Commissioner for Human Rights, in the context of the project on support for the National Human Rights Plan, under component IV of the education and human rights project, initiated training of National Police officers, prosecutors and representatives of the media in a one-year programme (2000-2001) that trained around 1 000 people.

48. In the context of the National Human Rights Plan, the State and civil society formulated the **National Human Rights Education Plan**, reviewed and approved by the Standing Committee for Follow-Up to the National Plan[8], which provides for implementation of the National Human Rights Training Plan, covering teachers, law-enforcement officers, prosecutors, media and other professionals and members of civil society. The National Training Plan began in 2003.

49. In 2006 Ecuador's prison system had only 256 professionals for 36 rehabilitation centres (not including preventive detention centres – CDPs). These consist of 84 health professionals (doctors and dentists), 61 social workers, 54 psychologists, 26 instructors and 31 heads of the working areas in the workshops.[9] In coordination with civil society, the Standing Committee for National Planning has published two manuals: **"Due Penitentiary Process"** and **"Training for Professional Teams in Ecuador's Detention and Social Rehabilitation Centres"** and the leaflet **"Rights for Everyone"**, which are the result of a training process for management, professional staff (doctors, psychologists, social workers, teachers and workshop trainers) and custodial staff of the country's prisons. The training process took place in 2003 and 2004, with the cooperation of the National Council and the National Directorate of Social Rehabilitation, the Foundation for Full Rehabilitation of Victims of Violence (PRIVA), the Institute of Criminology of the Central University of Ecuador and the United Nations Latin American Institute for the

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[7] Pursuant to Executive Decree No. 1527, published in Official Gazette No. 346 of 24 June 1998.

[8] Coordinating body for the National Plan, established pursuant to Executive Decree No. 1466, published in Official Gazette No. 320 of 17 November 1999.

[9] Source: Ms Dolores Torres, Head of the Planning Department of the National Department of Social Rehabilitation. Information updated in 2006.

Prevention of Crime and Treatment of Delinquency (ILANUD). Before the training took place, these manuals were distributed to other judicial officials, prosecutors and representatives of civil society, in workshops held at provincial level by the Standing Committee during 2005 and 2006.

50. Notwithstanding this progress, the State is aware that education and training in human rights must be strengthened and must cover, in the context of the National Education Plan, other professional fields, such as medicine and psychiatry.

51. Finally, pursuant to Executive Decree No. 3493, published in Official Gazette No. 735 of 31 December 2002, the **Human Rights Coordination Commission** was established as a coordinating mechanism for human rights issues that are the responsibility of the Ecuadorian State and for the fulfilment of Ecuador's commitments to the bodies and organs established under international human rights instruments. Following its establishment, the Commission approved its work plan, which includes drafting pending reports to the United Nations Monitoring Committees, including the Human Rights Committee.

7. Article 2.3 of the Covenant

52. With the enactment of the 1998 Constitution, a number of constitutional resources were introduced to protect and safeguard the exercise of human rights in Ecuador:

a) Constitutional remedy of *amparo*

53. The remedy of *amparo* allows for the adoption of urgent measures to desist, from, prevent the commission of or immediately rectify the consequences of an unlawful act of commission or omission on the part of a public authority. Article 95 of the Constitution of the Republic guarantees this remedy to any person or group before the Judiciary body designated by law. The proceedings are dealt with on a preferential, summary basis.

54. The law also allows for the possibility of taking proceedings against individuals, in line with the powers granted to the Ombudsman also to act on the grounds of acts of commission or omission by individuals violating the rights of individuals or groups.

55. It also states that the law will determine penalties for authorities or persons failing to abide by the decisions handed down by the judge in compliance with those proceedings, or judges and magistrates infringing their execution, and further that procedural rules opposing the remedy of *amparo* or provisions tending to delay prompt compliance will not apply. This prevents judges from invoking special or secondary legislation that might prevent immediate and effective execution.

b) Remedy of habeas data

56. Article 94 of the current Constitution guarantees the remedy of habeas data, recognizing the right of any person to have access to documents, databases and reports about himself or about his possessions, held by public or private bodies, and to know what use is being made of these data and the purpose of such use. Where failure to comply would cause damage, the person concerned may sue for compensation. He may request the competent official to update, rectify,

eliminate or cancel these data if they are incorrect or unlawfully affect his rights. A special procedure will be laid down by law for obtaining access to personal data in the relevant files of the national defence forces.

57. Between 1998 and the end of 2004, the Office of the Ombudsman processed 236 applications invoking the remedy of habeas data.

c) Remedy of habeas corpus

58. This remedy enables a detainee to be brought before the municipal authority within 24 hours of receipt of the application, and for that authority to take a decision within the following 24 hours; the remedy may not be delayed without just grounds. Should the mayor fail to act on the appeal, he shall also incur civil and criminal liability, thereby preventing some municipal authorities being unaware of the remedy, as has happened in certain cases.

59. Between 1998 and the end of 2004, the Office of the Ombudsman processed 4 692 applications invoking the remedy of habeas corpus at national level.

60. The following table illustrates the number of appeals processed by the Metropolitan District of Quito under this remedy.

HABEAS CORPUS APPEALS PROCESSED BY YEAR IN THE METROPOLITAN DISTRICT OF QUITO

HABEAS CORPUS Year	ANSWERED	ACCEPTED	RELEASED BY OTHER AUTHORITIES	DENIED
2000	6 225	1 209	2 924	2 092
2001	2 898	393	980	825
2002	2 613	615	877	1 007
2003	1 320	140	275	773
2004	898	105	219	486

Source: Habeas corpus statistics by year for the Metropolitan Municipality of Quito.

9. Office of the Ombudsman

61. Article 96, paragraph 1 of the Constitution provides for the involvement of the Ombudsman in *amparo*, habeas data and habeas corpus actions. The Ombudsman has national jurisdiction. He also defends and promotes the observance of the rights guaranteed by the Constitution and monitors the quality of public services. The following table gives information on the work of the Office of the Ombudsman since it was set up in 1998 up to 2003.

CONSTITUTIONAL REMEDIES DEALT WITH BY THE OFFICE OF THE OMBUDSMAN AT NATIONAL LEVEL BY YEAR

CONSTITUTIONAL REMEDY / YEAR	1999	2000	2001	2002	2003
COMPLAINTS	10 920	15 171	16 397	17 686	18 046
HABEAS CORPUS	841	1 768	686	695	381
HABEAS DATA	49	70	34	69	9
AMPARO	174	594	148	872	93
LEGITIMACY RULINGS	310	124	124	102	89
INQUIRIES		31 998	37 976	41 634	48 409
TOTAL NUMBER OF DOSSIERS	12 294	49 725	55 365	61 058	67 027

Source: Annual statistics of the Office of the Ombudsman.

C. Article 3

62. Article 41 of the Constitution of the Republic provides that "the State shall formulate and execute policies to achieve equal opportunity between men and women through a specialized agency that shall operate in the manner determined by law, incorporate a gender perspective in plans and programmes and offer technical assistance for its compulsory application in the public sector."

63. This law was implemented through the setting-up of the National Council for Women and the enactment of secondary legislation in the domestic legal order safeguarding equality between men and women, superseding laws that discriminated against women.

64. To safeguard the integrity of persons, among other things, physical, psychological and sexual violence, moral coercion, the undue application and use of human genetic material are prohibited (article 23, paragraph 3, first indent) and it is provided that "the State shall adopt the measures necessary to prevent, eliminate and sanction, in particular, violence against children, adolescents, women and older people". For the first time the Constitution explicitly enshrines the prevention, punishment and abolition of violence as a principle, a right and a guarantee of constitutional rank.

65. The latest **reforms of the Criminal Code, published in Official Register No. 45 of 23 June 2005** increased the penalties and aggravating factors against those responsible for sex crimes, and the mitigating circumstances in force before the reform were reduced. These latest reforms also introduced the offences of child pornography, human trafficking, offences relating to the unlawful removal and trafficking of organs and sexual exploitation, thereby bringing the text of the Constitution on criminal matters into line with international treaties and the Children's and Youth Code.

1. Measures against domestic and gender-based violence

66. In addition to the constitutional provisions referred to above, the Ecuadorian legal system also includes the **Violence against Women and the Family Act** (Law No. 103), adopted in 1995, which bans domestic violence. The Act provides for *amparo* measures and penalties in cases where violence is regarded as a misdemeanour, which are heard and resolved by the Offices of Commissioners for Women and the Family, while under the same Act, cases involving violations of *amparo* measures are heard and punished as offences of ordinary criminal justice.

67. In 1997 30 Offices of Commissioners for Women and the Family were set up throughout the country under Ministerial Agreement No. 235, published in Official Gazette No. 92 of 2 June 1997, 20 being operational initially. Thirty-two are currently operational, one in each province, except for Pichincha and Guayas which have five commissariats and Imbabura, Manabí, Esmeraldas, Azuay and Los Ríos, each with two.[10]

68. The Offices of Commissioners for Women and the Family are the principal bodies responsible for receiving reports of domestic violence and enforcing the law. However, police inspectors, national superintendents and political deputies are also entitled to do so. Ministerial Agreement 0341, published in Official Gazette No. 718 of 4 December 2002, implemented the Regulation of the Offices of Commissioners for Women and the Family which provides for profiles for the proper running of these Offices in the country.

OFFICES OF COMMISSIONERS FOR WOMEN AND THE FAMILY OF ECUADOR – 2006

PROVINCE	CITY
Azuay	Cuenca
	Cuenca
Bolívar	Guaranda
Cañar	Azogues
Carchi	Tulcán
Chimborazo	Riobamba
El Oro	Machala
Esmeraldas	Esmeraldas
	Esmeraldas
Guayas	Guayaquil
	Guayaquil
	Guayaquil (Chongón)
	Milagro
	Pascuales
Imbabura	Ibarra
	Otavalo
Loja	Loja

[10] In 2006 all Police Commissariats at national level were empowered to try and resolve domestic violence cases.

PROVINCE	CITY
Los Ríos	Babahoyo
	Quevedo
Manabí	Portoviejo
	Manta
Napo	Napo
Orellana	Orellana
Pastaza	Puyo
Pichincha	Quito – La Tola
	Quito – Ex Quinta
	Rumiñahui
	Centro
	Sto. Domingo de los Colorados.
Sucumbíos	Lago Agrio
Tungurahua	Ambato
Zamora Chinchipe	Yanzatza.

Source: National Directorate for Gender. Ministry of the Interior of Ecuador. July 2006.

2. Ecuador's National Directorate for Gender

69. Ministerial Agreement No. 1187 of 21 March 2000, published in the Official Gazette No. 47 on 30 March 2000, set up the National Office of Commissioners for Women and the Family in the Ministry of the Interior, whose basic functions cover the organization, coordination and monitoring of the Offices of Commissioners for Women and the Family. It was renamed the National Directorate for Gender by Resolution No. OSCIDI-2002-008 of 14 February 2002, retaining its previous functions, along with formulating, implementing and monitoring gender policy.

70. The Directorate for Gender is the body coordinating all measures relating to the administration of justice in domestic violence cases. Its general objective is to promote the implementation of policies, strategies and mechanisms fostering gender equality and reducing domestic violence.

71. The setting-up of the Offices of Commissioners for Women and the Family in Ecuador and the number of reports which is increasing every year highlight the problem of domestic violence, which has hampered efforts and campaigns to eradicate it. The following table shows that in 2005, 60 789 violent incidents were reported at national level, 52 450 against women and 8 339 against men. In 2006, the figure rose to 68 184 reports at national level, compared with 47 132 in 1999, an increase of 50 per cent between 1999 and 2006. This is due to more women, and in recent years more men, deciding to report domestic violence. The provinces with the most reports were as follows: Guayas, with 34 per cent of all reported cases (20 315); Pichincha with 28 per cent (17 108) and Manabí with 6 per cent (3 770).

NATIONAL DIRECTORATE FOR GENDER, MINISTRY OF THE INTERIOR AND POLICE

OFFICES OF COMMISSIONERS FOR WOMEN AND THE FAMILY
Incidents reported between 1999 and 2006

PROVINCE	1999	2000	2001	2002	2003	2004	2005	2006
AZUAY	1336	2175	2281	2030	2120	1951	934	2043
					155	933	861	1394
BOLIVAR	260	644	522	510	515	556	791	936
CAÑAR	259	313	273	288	294	272	354	544
CARCHI	787	1037	904	774	814	698	714	749
CHIMBORAZO	2125	2062	1997	2573	2065	2097	2396	2701
EL ORO	1683	1645	1714	1786	2252	1764	1995	2455
ESMERALDAS	1332	1295	1052	1066	754	851	964	854
					263	350	323	638
GUAYAS	9351	8459	7728	7926	6816	6591	5843	5101
	6603	6933	7374	7756	7438	6864	6508	7591
					2027	1985	1548	1606
					80	48	4907	5712
					1116	1033	1509	1774
IMBABURA	907	1099	1080	907	722	528	729	1169
	586	686	587	638	518	285	344	544
LOJA	2663	2192	2314	2360	2404	1867	1848	2950
LOS RIOS		892	686	895	1078	856	950	963
	1900	2815	2277	2162	1959	1631	1714	1791
MANABI	971	1012	933	530	250	1047	1269	1379
		2846	3128	2066	1890	2105	2501	2625
ORELLANA				137	243	266	292	552
PASTAZA	824	677	486	276	557	618	571	720
PICHINCHA	9397	7453	6899	6683	5195	6889	5951	5240
	3457	5074	4712	3190	4475	3446	**3793**	4069
				146	4458	4480	2927	3872
					718	820	1046	913
		2850	2991	3071	3239	3216	3391	3427
SUCUMBIOS								187
TUNGURAHUA	2573	2305	2157	2236	2336	2704	3685	3568
ZAMORA CHINCHIPE	118	121	76	133	131	94	131	117
TOTAL	**47132**	**54585**	**52171**	**50139**	**56882**	**56845**	**60789**	**68184**

Source of information: Archives of the National Directorate for Gender of the Interior Ministry

72. In order to respond to the concerns of the Committee, set out in paragraph 10 of its concluding observations, regarding the domestic violence cases that are tried, processed and resolved by ordinary criminal justice, according to the statistics of the Public Prosecutor's Office, we observe that during the life of the current Code of Criminal Procedure, there has been an increase in the number of cases resolved in ordinary criminal justice. In 2001 only 15 cases of sexual offences and domestic violence were tried in ordinary criminal justice, while in the period January-December 2002, the number rose to 232. 422 cases were tried between January and

December 2003. In 2004 the number of cases rose to 1182, almost four times as many as the previous year, and 1360 cases were tried in 2005. [11]

73. Policies have been implemented to prevent and tackle violence against women and the family. There are experiments on consultation processes between organized civil society, the national government and local government to help eradicate gender-related violence.

74. The Public Prosecutor's Office is responsible for investigations before and during trials of criminal offences in accordance with the Code of Criminal Procedure in force since 2001. In this connection, the institution, aware of violence against women, has introduced gender mainstreaming as a policy of the institution in all its operations, focusing on prosecuting offences of this kind, and has taken a number of measures to that end.

75. Since the investigation and prosecution of this type of offence requires technical staff, the Public Prosecutor's Office has set up units specializing in domestic violence and sexual offences in the country's three largest districts. Guayas-Galápagos, Pichincha and Manabí. Several training campaigns have been carried out with the following results:

a) "Gender-related violence and international law", (1998-2000). Interinstitutional Agreement between the National Council for Women and Ecuadorian Centre for the Promotion and Advancement of Women (CEPAM). 210 prosecutors were trained;

b) Agreement with the ILANUD Justice and Gender programme: training of 70 prosecutors, 13 trained as facilitators to replicate the training at national level, drafting of a protocol for monitoring the training and revision of the Prosecutors' Manual with a gender focus;

c) Training in gender and due process has been given to 150 law professionals, officials of the Office of the Ombudsman, criminal court judges and prosecutors of the counterparty institutions of the Observatory of a violence-free life for women and girls, at central level in five provinces: Imbabura, Manabí, Guayas, Pichincha and Azuay;

d) On 6 August 2003 the Public Prosecutor's Office, under Agreement No. 034, set up the Gender Committee whose specific functions are to advise, propose training measures and assess the gender training programme of the Prosecutors Training Academy;

e) The Public Prosecutor's Office and civil society have devised five compulsory unified protocols, one of which is designed for crimes of domestic violence and another for sexual violence; accordingly, a gender awareness module has been prepared for 350 medical experts accredited by the Public Prosecutor's Office.

76. The Public Prosecutor's Office has introduced the programme for the protection of victims, witnesses and other participants in criminal proceedings, with special emphasis on sex crimes and domestic violence.

77. The State's attention is drawn to the Committee's concern "about the very high number of suicides of young females [...], which appear in part to be related to the prohibition of abortion",

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[11] Judicial Statistics Unit of the Public Prosecutor's Office, 2006.

set out in paragraph 11 of the concluding observations. In this connection, the State would point out that a review of the official statistics do not record any suicides caused by abortion or rape.

78. On the issue of adolescent and adult women rape victims, the medical protocol for sexual offences requires the medical expert to inform victims of the existence of the emergency contraceptive pill (ECP) and places where it may be obtained, and the possibility and prevention of infection with sexually transmitted diseases and HIV/AIDS. Using this measure and other educational measures, the State aims to solve the problem of unwanted pregnancies.

79. In order to address the Committee's concerns set out in the above-mentioned paragraph 11, regarding access to appropriate health and education services for adolescents, in 2005 the National Plan on Health and Sexual and Reproductive Rights was established in collaboration with the Ministry of Public Health and other key health-sector players. Its aim is to guarantee the implementation of the national policy contained in the Plan, in the context of human rights and overall health, in order to enable the men and women of Ecuador to flourish and have a better quality of life, including the ability to enjoy a fulfilling sex life and the freedom to decide whether, when and how often to have children.

80. The **Health Organization Act**, which replaces the earlier Health Code, was enacted by Act 67, in the supplement to Official Gazette No. 423 of 22 December 2006. The Act includes a chapter on sexual and reproductive health whose guarantees include the right of women and men to decide whether and when to have children, access to contraceptives, and an obligation to provide prevention and treatment in connection with sexual and reproductive health for the whole population, particularly teenagers. It also provides for the formulation of education policies and programmes to promote sexual and reproductive health, prevent teenage pregnancy, prevent HIV/AIDS and other sexually transmitted diseases, encourage responsible parenthood and eliminate sexual exploitation.

3. Ecuadorian women's participation in civil, political and social life

81. In the civil context, to contract obligations on the couple's property, the administrator of the couple's affairs is bound to obtain the written consent of the spouse, otherwise contracts may not be made or they have no legal validity without this formal requirement. The couple's affairs may be administered by either spouse by mutual agreement, although it is presumed that the husband administers their property unless the spouses make an explicit declaration to the contrary.

82. Women participate more nowadays in all aspects of national life, in business, political and academic circles. This female presence has led to a reduction in certain male-chauvinist attitudes and has strengthened the organization of women in various fields and interests. Women's rights are currently on the public and private agendas, owing to their active participation in civil society.

83. On 6 February 1977 the **Women's Employment Protection Act** was enacted, followed in 2000 by the **Elections Organization Act**, containing positive discrimination measures amending the Political Parties Act, the Judiciary Organization Act and the Labour Code.

84. Article 2 of the Employment Protection Act prohibited multi-person lists of candidates from being registered with the Supreme Electoral Tribunal unless they included at least 20 per cent of women as full representatives and 20 per cent of women as alternates. Under the Act, women should be placed on lists both alternately and sequentially with men. Article 58 of the Elections Organization Act, which reformed the Employment Protection Act, raised the participation of women alternately and sequentially, to 30 per cent, increasing by 5 per cent at each election until such time as parity was achieved.

85. According to data provided by the Supreme Electoral Tribunal, the Act was complied with in all provinces of Ecuador, according to the reports of the country's Provincial Electoral Tribunals in the elections carried out in 1998, 2000, 2002, 2004 and 2006 to elect the President and Vice-President of the Republic, members of the provincial and national assemblies, provincial ministers and municipal councillors. The following tables compare the percentages of female candidates standing and female candidates elected to certain posts for the years 2000 and 2002.

Persons elected at national level - May 2000 elections

Rank	Women		Men	
	Number	%	Number	%
Prefects	0	0.0%	22	100.0%
Provincial ministers	18	20.2%	71	79.8%
Mayors	6	2.8%	209	97.2%
Councillors	265	29.8%	624	70.2%
Parish council members	964	24.9%	2911	75.1%
Total	**1253**	**24.6%**	**3837**	**75.4%**

Source: Supreme Electoral Tribunal / Processing: CONAMU

Candidates at national level / May 2000 elections

Rank	Women		Men	
	Number	%	Number	%
Prefects	6	5.9%	96	94.1%
Provincial ministers	260	43.0%	345	57.0%
Mayors	78	7.5%	956	92.5%
Councillors	2313	46.0%	2713	54.0%
Parish council members	4921	37.7%	8129	62.3%
Total	**7578**	**38.2%**	**12239**	**61.8%**

Source: Supreme Electoral Tribunal / Processing: CONAMU

Candidates at national level / Elections of 20 October 2002

Candidates at national level

Rank	Women		M Men	
President	1	9.1%	10	90.9%
Provincial minister	317	35.7%	571	64.3%
Mayor	89	8.5%	11	100.0%
Councillor	2.705	38.7%	4.286	61.3%
Provincial assembly member	612	40.8%	887	59.2%
Andean parliament	32	40.0%	48	60.0%
Total	**3.756**	**38.7%**	**5.813**	**61.3%**

Source: Supreme Electoral Tribunal / Processing: CONAMU

Persons elected at national level / Elections of 20 October 2002

Rank	Women		Men	
President			1	100.0%
Provincial minister	11	16.4%	56	83.6%
Mayor	6	2.74%	2	100.0%
Councillor	151	22.3%	526	77.7%
Provincial assembly member	20	20.0%	80	80.0%
Andean parliament	1	20.0%	4	80.0%
Total	**189**	**21.5%**	**669**	**78.5%**

Source: Supreme Electoral Tribunal / Processing: CONAMU

86. The information given in the above tables shows that for the year 2000 the percentage of women elected attained almost 25 per cent, an increase of some 20 percentage points in relation to the 1996 elections. In 2002 the percentage dropped to almost 22 per cent.

87. For 2004 the position improved substantially. There were 118 male candidates for the Prefecture compared with 12 women competing for 22 seats. The election of 4 women prefects out of 12 women candidates amounted to 33.33 per cent. Candidates for mayor included 137 women, or 10.66 per cent of the total. Thirteen women were elected to the municipal councils (5.94 per cent of the total). In this case, the proportion of women elected was lower than the female candidates, but more women were elected than in the previous election. In 2002 they won six seats, equivalent to 2.74 per cent, and the figure doubled in 2004. The percentage of women elected as provincial ministers also doubled in 2004 to 31.87 per cent, compared with 16.4 per cent in 2002 and the proportion of female councillors rose from 22.3 per cent in 2002 to 31.01 per cent in 2004.

88. For 1998 the participation of female parliamentarians was 12.2 per cent. In 2006, for the legislative period 2007-2011, the record figure of 25 per cent was attained, with 25 female members elected.

89. In 1998 women held 20 per cent of posts in the executive branch, in 1999 26.7 per cent, in 2002, 14 per cent, in 2003, 26 per cent and in July 2004 the figure was a mere 13 per cent.

Nevertheless, for 2007, female representation was 45 per cent, with the appointment of eight women as government ministers.

90. The Employment Protection Act provides that at least 20 per cent of people employed in the Supreme Courts of Justice should be women as high-court judges, who will also appoint women as at least 20 per cent of judges, notaries, registrars and other legal staff, including secretaries, assistants and councillors. This staff is appointed on the basis of public competitions and merit. In some cases, the percentage required by law could not be attained owing to a lack of female candidates. The rent tribunals have the highest proportion of women judges with 56 per cent. The number of female public defenders in the country is also significant.

91. For the first time in 2005, two women were elected to the Supreme Court of Justice, a body not covered by the Employment Protection Act, by means of a transparent process that was even overseen by international organizations, when Congress and the Executive dissolved the previous Court, for political reasons that led to the removal of the then President of the Republic, Lucio Gutiérrez.

92. Since the 1990s, women have increasingly been involved in education at all levels. According to the report on compliance with the millennium development goals (MDGs), the target for primary education was met in 2005 and the trend is constantly improving. Between 1990 and 2004, there were 98.3 girls for every 100 boys in primary education. At secondary level for 1990 females were in a much more favourable situation (106 girls for every 100 boys) while in 2004 the ratio was at parity (100 girls for every 100 boys). There is a rising trend in higher education.

93. The level of access to education by language and ethnic group in secondary education for 2003[12] was 88 females for every 100 male speakers of indigenous languages in rural areas; the ratio is similar in higher education (92 women for every 100 men)[13].

94. The raw illiteracy rate in Ecuador is 9.02 per cent, which represents 732 089 persons, 58 per cent of whom are women (INEC 2001). Three per cent of women and 2.7 per cent are men in the 15-24 age group are illiterate. In the 25-39 age group, the rate is 6.2 per cent for women and 3.8 per cent for men; for the 40-64 age group the rate is 19.4 per cent for women and 13.1 per cent for men. The highest level of illiteracy is among the over-65 population, namely 42.7 per cent of women and 30.3 per cent of men.[14]

95. For 1998, the school drop-out rate for males was higher (4.7 per cent) especially in the 6-17 age group, while the rate for females was 2.4 per cent. From age 25 more women drop out, with a rate of 3.3 per cent as against 2.2 per cent for men.[15] In 1998, women generally had

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[12] SIISE-INEC, Integrated Household Survey System.

[13] The results are backed up by the trends discovered in the Population and Housing Census of 2001.

[14] CONAMU and INEC, Women and Men of Ecuador in Figures, 1999.

[15] Ibid.

lower rates of repeating the school year than men; according to the third round of the 1998 Survey of Living Conditions, the rate was 5.6 per cent for women and 6.5 per cent for men.[16]

96. Democratization in education has meant that the distinction between the sexes, far from fostering the setting-up single-sex educational establishments for boys or girls, has been the reason behind coeducation as a method for eliminating sexist barriers. In 1997, the number of schools practising coeducation was 22 997; there are 456 single-sex schools for boys and 781 for girls. These figures show that 94.9 per cent of schools are mixed, educating both males and females. The majority of middle schools (88 per cent) are mixed, with single-sex schools for girls coming next at 7.9 per cent.[17]

97. Articles 35, 36 and 40 of Ecuador's Constitution introduced important changes regarding the recognition of women's rights. On this basis, the State fosters women joining the paid labour force with equal rights and opportunities, guaranteeing them equal pay for work of equal value. They enshrine respect for women's employment and reproductive rights, improving access to social security and welfare systems, especially for pregnant and breast-feeding mothers, working women, women working in the informal and craft sectors, women heads of household and widows.

98. Any kind of employment discrimination against women is prohibited. The work of the spouses or partners in the household will be taken into consideration for compensating them fairly in special circumstances where they are at an economic disadvantage. Unpaid domestic work is recognized as productive work. The State will also promote the joint responsibility of the father and mother and ensure compliance with the reciprocal duties and rights of parents and children. This provision is related to article 23 of the Covenant which we will address below.

99. The above-mentioned provisions are among the most significant achievements contained in the new Constitution, as they represent three major goals pursued by Ecuadorian women: a) equal pay for equal work, b) positive discrimination in relation to their gender and vulnerable situation, and c) recognition of unpaid domestic work as productive.

100. Despite this progress in the legal field, according to the latest data of the Central Bank (2006), female underemployment is 50 per cent as against 25 per cent for men, while open unemployment for women was 11 per cent compared with 6.5 per cent for men. The worst affected group is young women: the unemployment rate for women aged between 15 and 29 is 19 per cent as against 11.3 per cent for young men. Although the Constitution recognizes the right to equal pay for equal work, nationally it is estimated that in 1998 women earned 32.5 per cent less than men as income for paid work, which fell to 22 per cent for 2006.

101. The State, through the National Council for Women, under the Equal Opportunities Plan, is implementing medium- and short-term programmes aimed at poor women, focusing on heads of household and supporting job creation, as measures to eradicate poverty. We will expand on this information in the section of there reports on article 26.

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[16] Ibid.

[17] SINEC, Statistical Bulletin, academic year 1996-97, No. 8, Ministry of Education and Culture.

CH. Article 4

102. Articles 180 and 181 of the current Constitution govern states of emergency on Ecuadorian territory. Governments of the State party have declared states of emergency for serious internal unrest or for natural disasters, as provided for by article 180 of the Constitution.

103. Regarding the observation in paragraph 15 of the Committee's concluding observations that "the constitutional articles which may be derogated from during a state of emergency are not in conformity with the Covenant," the State wishes to clarify to the Committee that the rights that may be suspended during a state of emergency are set out in article 181, paragraphs 5 and 6 of the Ecuadorian Constitution, and are restricted to the following: the right to free expression of opinion and thought in all forms through any communication medium (censorship of public communication media); inviolability of the home; inviolability and confidentiality of correspondence; the right to travel freely through the national territory and to choose one's residence, and the right of association and of free assembly for peaceful purposes.

104. Article 181, paragraph 6 of the Constitution mentions only the **suspension or limitation of rights**. Therefore, the rights referred to above may only be suspended or limited but never derogated from. Such suspension or limitation does not relate to the rights that may not be suspended under any circumstances, under article 4, paragraph 2 of the Covenant.

105. In order to control states of emergency, article 182 of the Constitution requires the President of the Republic to notify the National Congress within 48 hours of publication of the decree declaring the state of emergency. Congress may revoke that decree at any time. Furthermore, a state of emergency may last no more than sixty days. If the circumstances persist, it may be renewed and the National Congress must be notified. When the grounds for the state of national emergency no longer apply, the President of the Republic decrees that the emergency is over and immediately notifies the National Congress by means of an appropriate report.

106. Over the reporting period, the State declared five states of emergency in 1999, three in the province of Guayas and two throughout the whole country, on account of the country's serious political crisis that arose when President Jamil Mahuad came to power; one emergency in 2000 and another in 2001; three were declared in 2002, one in the provinces of Sucumbíos and Orellana, owing to the impact of the armed Colombian conflict on the border, one in Ecuador's coastal provinces on account of natural disasters and one in the whole country on account of the serious internal unrest; there was one declaration in 2004, on account of the serious political crisis that occurred when President Lucio Gutiérrez was removed from power. After each declaration, the lifting of the state of emergency was decreed within the time limit laid down in the Constitution.

107. The States parties were notified, through the United Nations Secretary-General, whenever states of emergency were declared or lifted, as provided by article 4, paragraph 3 of the Covenant.

D. Article 5

108. Articles 23 and 24 of Ecuador's Constitution safeguard the civil and political rights and the rules of due process for citizens resident in the country.

109. Since the Covenant is an international instrument, the norms it contains are part of Ecuador's legal order and take precedence over other laws of lower rank, as provided for by article 163 of the Constitution, which expressly states: "The norms contained in international treaties and conventions, once promulgated in the Official Gazette, shall form part of the domestic legal order and shall take precedence over laws and other norms of a lower rank."

110. As we said in the information relating to article 2, paragraph 2 of these reports, article 19 of the Constitution states that "The rights and guarantees laid down in the Constitution and in international instruments do not exclude others intrinsic to the human person and necessary for his or her psychological and physical development." This provision guarantees that there is no restriction or derogation from any of the fundamental rights existing in the State party, as required by article 5, paragraph 2 of the Covenant.

E. Article 6

1. Paragraph 6.1

111. Article 23, paragraph 1 of the Constitution enshrines the right to life and prohibits the death penalty. Ecuadorian law banned capital punishment in 1878, along with any kind of mental or psychological punishment. Article 49 of the current Constitution protects the right to life from the moment of conception, in other words it recognizes the right to life of the unborn child and, in accordance with this constitutional principle, national law penalizes abortion, except in the cases provided for in article 447 of the Criminal Code. Article 30 of the new Health Organization Act, enacted on 22 December 2006, is in line with the above-mentioned criminal law, but introduces the obligation to "to treat women in the process of aborting or in inevitable cases of abortion duly diagnosed by the staff responsible for treatment".

112. Articles 449 to 462 of the Criminal Code (Chapter I, in Title VI of Volume Two) lay down penalties for crimes against life. The Criminal Code was reformed in September 2001 to introduce more severe sentences for crimes against life with aggravating circumstances, such as kidnapping leading to the death of the victim and rape leading to the death of the victim (articles 450, 452 and 512 to 515).

113. Article 23, paragraph 2 of the Constitution prohibits the enforced disappearance of persons and defines it as a crime against stating that it is imprescriptible with regard to both proceedings and penalties. Such offences may not be the subject of a pardon or amnesty. It also prohibits improper application or use of human genetic material. Ecuador has also ratified the Rome Statute of the International Criminal Court, published in Official Gazette No. 699 of 7 November 2002, thereby making it law in the Republic.

114. Article 35, paragraph 10 of the Constitution prohibits the paralyzing, for any reason, of public services, especially health, education, justice and social security; electricity, drinking

water and mains water, processing, transport and distribution of fuels; public transport and telecommunications. The relevant penalties will be laid down by law. The aim of this norm is to safeguard the right to life, through continuous provision of basic services, principally health.

115. Article 156 of the Criminal Code, reformed by Article 15 of Law 2002-75, published in Official Gazette No. 635 of 7 August 2002, lays down penalties for doctors, nurses, pharmacists, medical assistants, staff of sanitary houses or owners of pharmacies or drugstores who disobey orders from the competent authority by paralyzing services or failing to assist those needing such services, with a prison sentence of one to five years and a fine. The maximum penalties provided for in this article are to be applied to professional organizations inciting the committing of such acts, where they actually take place.

2. Right to health

116. Ecuador's Constitution guarantees public health programmes in terms of the promotion, protection, funding and dissemination of policies aiming to foster measures designed to optimize levels of health of both individuals and families, in the various estates in which human beings develop, whether at work or in the community, in accordance with the provisions of articles 42 to 46 of the Constitution.

117. Based on the Basic Health Indicators Report for 2007[18] in an estimated population of 13 408 270, an analysis of the health profile reveals a general mortality rate per 10 million inhabitants of 43.2, being substantially higher for men (50.2) than for women (37.6). The main cause of death for both sexes is cerebro-vascular diseases, with a rate of 23.6 for chronic and degenerative diseases. In second place are influenza and pneumonia with a rate of 23, these being higher in men (24.9 and 24.2). Next comes diabetes mellitus (22.2), while in fifth. Sixth and seventh place are heart and related diseases (chronic degenerative) such as hypertension, cardiac ischemias and heart failure, ill-defined complications and diseases affecting men more often (21.4, 24.6 and 19.5 respectively). In eighth and ninth places are those relating to violence as a result of traffic accidents with a rate of 18.8 (30.3 for men and 8.2 for women), assaults (homicides) with 17.6 which have reached epidemic proportions and a serious public health problem, and in tenth place are cirrhosis and other liver diseases.118. In 2005, the fertility rate fell to 2.5; in 2006, 135 women died through pregnancy, childbirth or during lying-in, corresponding to a rate of 2.0; 724 died of cancer of the uterus (2.9‰ of the female population) and 405 women died from breast cancer (1.6‰), with a rate of 1.9‰ for ovarian cancer. In 2006, only 190 149 women, or 2.84 per cent of females aged between 35 and 64 underwent screening for cervical cancer at units of the Ministry of Public Health, a disease that is one of the main causes of death in the country.

119. Regarding morbidity in 2006, the following table shows that the illnesses illustrated are related to lifestyle, coverage of basic services, seasonal factors, among other, that are preventable by educating the community and investing in basic health and sanitation.

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[18] Ministry of Health, INEC, PAHO/WHO/UNFPA/UNICEF: Basic Health Indicators, 2007.

MORBIDITY 2006

Order No	CAUSES OF MORBIDITY	NUMBER OF CASES	RATE *
1	Acute respiratory infections	1 425 184	10 629.1
2	Acute diarrhoeal diseases	450 963	3363.3
3	Other venereal diseases	64 692	482.5
4	High blood pressure	51 910	387.1
5	Diabetes	18 406	137.3
6	Chickenpox	15 358	114.5
7	Food poisoning	8 901	66.4
8	Vivax malaria	7 813	58.3
9	Classic dengue	6 810	50.8
10	Salmonellosis	6 779	50.6
Population	**13 408 270**		

* Per 100 000 inhabitants
Source: EPI -2 EPIDEMIOLOGY SECTION. MINISTRY OF PUBLIC HEALTH

120. For 2007 the **National Health Plan**, which is consistent with the National Government Development Plan, laid down the Ministry of Health's strategic guidelines for 2007–2011, with the mission of monitoring compliance of the principle enshrined in the Constitution whereby the State guarantees the irrenounceable right to health, its promotion and protection by incorporating conventional and alternative medical practices, involving all responsible sectors and players at national, provincial and local levels, through the organization and operation of the National Health System, in a distributed, decentralized and participative manner, observing the principles of a fair, comprehensive, caring, universal, participative, pluralist, quality and effective service.

121. In order to achieve this objective, the State is putting in place the technical and legal conditions to enable services to be provided through the organization of a decentralized and participative National Health System, with the Ministry of Health directing, guiding, regulating and supervising its operation. For the provision of services, the Ministry of Public Health has substantially increased its human resources so that it currently has 28 766 **officials** and staff throughout the country, 2000 rural doctors and 2860 hired for the emergency on various types of contract under the Emergency Decree issued in March 2007. That Decree allocated 50 million dollars outside the budget from the Savings and Contingency Fund (FAC) to the Ministry of Health, which were used for improving infrastructure and re-equipment of operational units at national level. The creation of 4 500 fixed lines is being arranged.

122. Regarding public medical care services, in 2007 the Ministry of Health continued implementing strategies for extending coverage to the 23 per cent of Ecuadorian families who have no access to prevention or treatment services. As a result of implementing the strategies of the National Health Plan, preventive care coverage was increased by 10 per cent, especially for pregnant women and children under five, which is reflected in a reduction in the trend of mother and child mortality and morbidity rates.

123. Public health measures, especially immunizations, have succeeded in eliminating measles and eradicating neonatal tetanus and poliomyelitis, and controlling urban and rural canine rabies.

Additionally, onchocercosis and leprosy have been eradicated. Programmes for malaria-dengue, tuberculosis, HIV, nutrition and epidemiological surveillance are in progress, with coverage in excess of 70 per cent.

124. Since its inception, the Under-Secretariat for the Extension of Social Welfare has aimed to provide universal access at no cost to the patient, family or community, using a model with an intercultural, gender and generational focus that ensures efficient spending. With this objective, the Ministry of Health has set up Basic Health Teams (EBAS), assigning the territory and population for which each is responsible for health care, to that end defining the basic set of services for family visits for promotion, prevention, recovery and rehabilitation.

125. Applying the comprehensive family and community care model, up to October 2007 the Ministry of Public Health succeeded in treating 74 714 individuals and a total of 43 641 families.

126. The maternal mortality rate in Ecuador for 1997 was 93.4 per 100 000 live births (INEC 1997), with regional differences attaining up to 250 maternal deaths per 100 000 live births. For 2006, the maternal mortality rate was 73.0 per 185 056 live births..[3]

127. Specific measures are being taken to improve women's access to health services, including an increase in the number of health professionals in rural areas. With the 2005 reforms of the **Free Maternity and Childcare Act**[4], the law requires health centres and hospitals to provide 55 services related to sexual and reproductive health, including ante-natal and post-natal care, care during pregnancy, family planning, cervical and breast cancer screening, detection of HIV/AIDS in women, care for victims of domestic violence, emergency obstetric care, treatment of sexually transmitted diseases and of the most common infant diseases, including those requiring hospitalization.

128. During 2006, 2 733 608 people benefited under the Act, 1 281 177 of whom were women and 1 452 431 children under five.[5]

3. HIV/AIDS

129. Sexually transmitted diseases have been increasing in recent years. According to Ministry of Health figures for 2006, there are 1 319 people infected with HIV in the country: 741 men and 578 women are carriers; 350 men and 128 women have AIDS; these figures exclude 102 infected children under 14.

130. For 2006, of all cases of HIV/AIDS in Ecuador, 56.2 per cent were male and 43.8 per cent female. In relation to previous years, the trend is for an increasing number of women to contract the virus; the ratio of women to men during the period 1984-1999 was 1:3.7, while in 2007 it was 1:2.14.

131. The Ecuadorian Ministry of Public Health, through the **HIV/AIDS Prevention and Control Programme**, has promoted an appropriate control and treatment policy for infected persons. In April 2000, the National Congress enacted the **Act on the prevention and comprehensive care of HIV/AIDS**, which declares the fight against Acquired Immune Deficiency Syndrome to be in the national interest. In December 2002 the Regulation was sent to people living with HIV/AIDS.

132. Regarding financial resources allocated to HIV/AIDS prevention and care in recent years, the budget allocation to this programme for **2002** was one million dollars plus 900 000 dollars of emergency funds and 750 000 dollars from the vice-presidency, for sexually transmitted diseases (STDs), condoms, milk, IEC, supervision and assessment of the purchase of anti-retro-viral drugs. The programme is also currently supported by the Global fund to fight AIDS.

4. Right to a healthy environment

133. Article 23, paragraph 6 of the Constitution refers to the right to live in an environment that is healthy, ecologically balanced and free of pollution. The restrictions on the exercise of certain rights and freedoms to protect the environment will be laid down by law.

134. Article 87 of the Constitution provides for the Environment Act to classify environmental offences and to lay down procedures for establishing the administrative, civil and criminal responsibilities of natural or legal persons, Ecuadorians or aliens, for acts or omissions contravening environmental protection regulations.

135. Article 90 of the Constitution prohibits the manufacture, importation, keeping or use of chemical, biological or nuclear weapons, and the entry of nuclear or toxic waste into the country. The State will regulate the production, importation, distribution and use of any substances that, while useful, are toxic and hazardous for persons or the environment.

136. The preamble of the **Environmental Management Act**, published in Official Gazette No. 245 of 30 July 1999, recognizes the right to live in a healthy, ecologically balanced and unpolluted environment, conservation of ecosystems, biodiversity and integrity of the country's genetic resources; it sets up a national system of nature reserves, thereby ensuring sustainable development.

137. Article 41 of the Act governs the protection of environmental rights and states that in order to protect individual or communal environmental rights, natural or legal persons or human groups may take legal action to report infringements of environmental regulations, without prejudice to the *amparo* remedy provided for in the Constitution of the Republic.

138. Since the implementation of the Colombia Plan by the Colombian State, in the year 2000, complaints have been lodged against settlers of Ecuador's northern frontier zone (Esmeraldas, Carchi and Sucumbíos), regarding the effects of fumigations with glyphosphate to eradicate coca plantations in the south of Colombia, which have affected the health of inhabitants of Ecuador's frontier zone leading, in some cases, to the displacement of those affected within the country. These fumigations have also affected the area's environment and biodiversity.

5. Paragraph 6.2

139. Article 23, paragraph 1 of the Constitution of the Republic states that the death penalty shall not exist. Ecuador is a party to the Optional Protocol to the International Covenant of Civil and Political Rights that outlaws the death penalty.

6. Paragraph 6.3

140. The Constitution of the Republic prohibits genocide and defines it as a crime against humanity, that it is imprescriptible with regard to both proceedings and penalties, and may not be the subject of a pardon or amnesty

141. Ecuador is a party to the Statute of the International Criminal Court, adopted in 1998 and ratified in 2002. The Bill on Crimes Against Humanity is currently going through the National Congress. The Bill aims to implement some of the norms of the Statute of the International Criminal Court in domestic law.

F. Article 7

142. Since article 163 of Ecuador's Constitution incorporates the international conventions ratified by the State into the domestic legal system, the definition of torture is assimilated to that appearing in the relevant international treaties, such as the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, of 1984, to which Ecuador is a State party.

143. Article 23, paragraph 2 of the Constitution of the Republic prohibits torture and other cruel, inhuman or degrading treatment, and defines it as a crime against humanity that is imprescriptible with regard to both proceedings and penalties, and may not be the subject of a pardon or amnesty. In such cases compliance with the orders of a superior does not constitute exemption from liability. Article 205 of the Criminal Code classifies torture of detainees as an offence and lays down sentences of five years' imprisonment and the suspension of the offender's political rights for the same period.

144. Article 24, paragraph 4 of the Constitution provides that anyone who is arrested has the right to be fully informed of the reasons for the arrest, the identity of the authority ordering the arrest, the identity of the officers making the arrest and the identity of those conducting questioning. He shall be informed of his right to remain silent, to request the presence of counsel, and to communicate with a family member or any other person of his choice. Article 24, paragraph 5 of the Constitution provides that any judicial, pre-trial or administrative proceedings that take place without the presence of private defence counsel, or counsel appointed by the State lack evidentiary effect.

145. These Constitutional norms prevent acts of torture. Articles 11 to 15 of the new Code of Criminal Procedure are an effective means of eliminating torture, cruel inhuman and degrading treatment or sentences by criminal justice officials.

146. In this connection and in conformity with Constitutional norms and the new Code of Criminal Procedure, the Judicial Police were set up as the agency responsible for receiving criminal complaints, i.e. in the first stage of investigations. The complaint is then tried by the Public Prosecutor's Office which initiates the criminal procedure. According to National Council of the Judiciary data, during 2004, 162 cases were tried in national criminal courts for torture, ill treatment and assault and battery; 149 cases for rape and 39 cases for sex crimes.

147. Regarding cases of torture and others brought against police officers by the criminal justice police, the following table shows that of the 1063 prosecutions dealt with by the Court of Police Justice in 2003, 39 per cent were about to be settled and 61 per cent had already been settled. The most common offences for which police officers were tried and sentenced are: unlawful detention 139 (13 per cent of offences); manslaughter 112 (11 per cent); and abuse of authority 71 (7 per cent).

PROSECUTIONS BEFORE THE COURT OF POLICE JUSTICE, 2003

OFFENCE	TOTAL
Abuse of authority	71
Against human life and public security	24
Illegal detention	139
Missing person	9
Rape of a minor	45
Escape	69
Extortion	31
Injury	23
Death	112
Perjury	20
Kidnapping	18
Rape	15
Liberty *amparo*	3
Medical malpractice	1
Other	483
TOTAL	**1063**

Source: Statistics Section, National Court of Police Justice.

148. Article 22 of the Constitution guarantees the right of victims to compensation in the event of judicial error, improper administration of justice, acts that may have led to the imprisonment of an innocent party or to his or her arbitrary detention, and violations of the norms established in article 24. The State will have the right of recourse against the judge or official responsible. As the following table illustrates, the victims of some cases of torture have been compensated by the State.

PETITIONS LODGED WITH THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, OAS

Case No	Name	Covenant articles *	Status of case
P-943-04	GAYBOR TAPIA NILO & MUÑOZ COLÓN	articles 5, 8 and 25	Admissibility report
MC-155-06	JIMÉNEZ SALAZAR FILMAN ADOLFO	articles 4, 5, 8 and 25	Request for protective measures, information provided

Case No	Name	Covenant articles *	Status of case by the State
P-744-05	BETANCOURT ARCE ELIZABETH	articles 5, 8, 24 and 25	Admissibility phase
P-489-02	AROCA PALMA JOFFRE ANTONIO	articles 4, 5, 8 and 25	Admissibility phase
P-302-03	AGUAS ACOSTA ALONSO ANIBAL	articles 5, 8, 24 and 25	Admissibility phase
P-1377-04	MARTHA CECILIA CADENA	articles 5, 8, 24 and 25	Admissibility phase
P-295-03	CAÑAR PAUTA SAUL FILORMO	articles 4, 8 and 25	Admissibility phase
P55/2000	HIDALGO GUSTAVO WASHINGTON	articles 5, 8, 24 and 25	Admissibility phase
CASE 12,272	LAGOS GUERRERO EDUARDO ROMEO	articles 5, 8, 24 and 25	Grounds phase
P12.365	LÓPEZ PITA ELÍAS ELINT	articles 4, 5, 8, 24 and 25	Grounds phase
CASE 12.238	LARREA PINTADO MIRIAM	articles 24 and 25	Grounds phase
MC-307-06	FAJARDO et al. HUGO et al.	articles 4 and 5	Protective measures
MC-88-05	VÉLEZ LOOR JESÚS TRANQUILINO	articles 4 and 5	Request for protective measures
	DANIEL TIBI	articles 5, 8, 24 and 25	Enforcement of sentence

Source: Directorate-General for Human Rights and Social Affairs, Ministry of Foreign Affairs, 2006

*Article 4. Right to life, article 5. Right to personal integrity, article 8. Right to judicial guarantees, article 24. Equality before the law, article 25. Right to judicial review.

1. Conditions in prisons

149. The Office of the Ombudsman and the Public Prosecutor's Office carry out periodic checks of the prisons and the general operation of the prison system, which enabled the solitary confinement cells to be eliminated.

150. Regarding administrative measures, three visiting days per week have been established (Wednesday, Saturday and Sunday) so that detainees can receive their family members, friends and acquaintances. They also keep in constant contact with their defence lawyers and, in the case of aliens, their diplomatic representatives. They also have the right to receive and send messages, and to meet Government and civil society authorities. They are entitled to complain to the administrative and judicial authorities regarding the protection of their rights.

151. The infrastructure of the rehabilitation centres is inadequate to house the number of prisoners, as the centres have a lower capacity than the percentage of the prison population.

In 2002, the capacity was 6 831 places, with a deficit of 1 579.[19] The deficit leads to overcrowding which affects detainees' quality of life. In 2004, other prisons opened in Santo Domingo de los Colorados (capacity 150 inmates) and Archidona (capacity 100 persons). These two centres helped to reduce prison overcrowding. However, some inmates prefer not to be transferred away from the place where they were sentenced or their trial is still in progress.

152. Under Ecuador's National Human Rights Plan, adopted as a State policy in 1998, the **Operational Plan for Human Rights in Prisons** was drafted in 2003 with the active participation of prisoners, government authorities and civil society organizations associated with the prison system, with the objectives of eradicating torture and other cruel, inhuman or degrading treatment of prisoners and improving the humanitarian conditions of the inmates.

153. This Operational Plan also provides for the improvement of sanitary and health conditions in prisons, a reduction in the prison population through bilateral and multilateral agreements for aliens to serve their sentences in their countries of origin, such as the European Convention on the Transfer of Sentenced Persons, which Ecuador joined on 15 July 2005, and the current bilateral conventions that, since 2006, Ecuador has had with Spain, Peru, Colombia, the Dominican Republic and El Salvador.

2. Ill-treatment of children and adolescents

154. The **Children's and Youth Code** was approved by the State in November 2002 and published in Official Gazette No. 373 of 3 January 2003. Its provisions entered force in July 2003. Article 50 of the Code prohibits torture and other cruel, inhuman or degrading treatment of children and young persons.

155. Articles 40 and 41 of the Code refer to the provisions prohibiting ill-treatment in educational institutions, such as physical or psychological ill-treatment and expulsion on the grounds of maternity or other reasons relating to sex, age, disability, ethnic background, social status or religious belief. These rules also include criminal and administrative penalties for any form of sexual assault in educational establishments.

156. Chapter IV of the Code contains legal provisions regulating the ill treatment of children and young persons in both the family (private) and public spheres, and sexual abuse or exploitation, and trafficking or pornography involving children and young persons.

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[19] Statistical Bulletin, National Directorate for Social Rehabilitation, 2002.

3. Indicators of child ill-treatment

i) Treatment by teachers[20]

157. In recent years there have been significant advances with the "Good treatment" programme - this emphasizes participatory and respectful pedagogical methods which challenge children to show their creativity and promote self-confidence. The household survey for 2000 |showed that children in rural areas were at higher risk of being punished by having recreation withheld or by receiving blows or insults or being the butt of jokes than those in cities (25 per cent and 17 per cent).

158. Half of the children said that they were treated well by their teachers. Of the children interviewed, 47 per cent described good treatment by their teachers when they had committed transgressions or failed to behave; where they obtained low grades, teachers talked to their parents or with the children regarding what had taken place. Good treatment by teachers was more common in cities (50 per cent) than in rural areas (41 per cent).

159. In the same source, one out of 10 children in cities stated that their teachers hit them. The figure is twice as high in rural areas. Of children of school age, 3 per cent have suffered insults or jokes at the hands of their teachers, and 10 per cent have been punished by having recreation withheld.

ii) Treatment by parents

160. There is a high incidence of ill-treatment within the family in Ecuador: 43.60 per cent of children and young people have undergone some kind of ill-treatment[21].

161. According to the above-mentioned household survey[22], four out of 10 children said that their parents hit them when they were badly behaved or disobeyed. Others had been subject to psychological ill-treatment; parents had confined to a room or bathed in cold water 3 per cent of children; 5 per cent had suffered insults or jokes; and 2 per cent had been expelled from their home or deprived of food. Blows were more frequently used by parents in rural areas than in cities, more in Amazonia than in other regions, and more in poor and indigenous homes. Twice as many children in Quito had suffered insults (8 per cent) as in Guayaquil (4 per cent), the country's second city.

162. More girls than boys were well treated by their parents. Parents behaved differently depending on the sex of their children. Gender-based differences, while not pronounced, are in favour of girls. It appears that a higher percentage of girls (38 per cent) than boys (35 per cent) receive good treatment; correspondingly, a higher percentage of boys (47 per cent) than girls (42 per cent) are ill treated. Boys and girls suffer equally from lack of attention.

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[20] Survey of Households and Schools, 2000.

[21] Taken from the draft of the fourth report to the CMRW.

[22] Ibid.

iii) Measures taken to combat ill-treatment of children

163. The **Citizens' Action Programme for Tender Care** of the National Institute for Children and the Family (INNFA) is being implemented throughout the country, based on ten years' experience of the work carried out by the networks specializing in caring for ill-treated children.

164. In 1997, the eight INNFA offices for care for ill-treated children and young persons, located in the towns of Machala, Quevedo, Guayaquil, Esmeraldas, Ambato, Cuenca and Quito dealt with 3.100 cases of ill-treatment nationwide. In 1999, 4 044 cases of ill-treatment were dealt with. In the year 2000, 307 cases were dealt with at the INNFA centre for the care of ill-treated children and young persons. In the first half of 2001 (January-July) in Quito, 227 cases of ill-treatment were dealt with at centres for the care of ill-treated children and young persons (centre for good treatment and tender care).

165. For the implementation of the Citizens' Action Programme for Tender Care, in the year 2000, some 189 000 dollars were invested in 23 towns in the country; for 2001, the investment in 23 towns in the country amounted to 375 000 dollars. In 2002, 57 000 dollars were invested in the follow-up and continuation of the proposal.

166. In 2003 the National Children's and Youth Council was founded, and in October 2004, by means of Resolution No. 022, it approved the 10-year national comprehensive protection plan for children and adolescents. This Plan includes 29 policies broken down into three age groups, including policies for prevention of, care and protection from of all forms of ill-treatment, violence, abuse, sexual harassment, trafficking and sexual exploitation for profit.

167. Regarding other inhuman treatment, the reader is referred to the information on article 3 in these reports, on domestic violence and sexual harassment, and on article 10 relating to the rights of detainees.

G. Article 8

168. Article 23, paragraph 4 of the Constitution of the Republic prohibits slavery and servitude and human trafficking in any form. Article 23, paragraph 17 reads as follows: "The right to work. No-one may be compelled to carry out unpaid or forced labour".

169. This principle enshrined in the Constitution is also taken over in article 3 of the Labour Code and is the obligation of the labour authorities to monitor respect of workers' rights, condemn and penalize any form of labour exploitation, without prejudice to any appropriate civil or criminal proceedings where human rights are violated in general.

170. In 2004, by Presidential Decree, the drafting committee was established for the National Plan of Action against kidnapping, illegal trafficking in migrants, sexual and labour exploitation and other kinds of exploitation and prostitution of women, children and adolescents, child pornography and the corruption of minors.

171. Under the reforms of the Criminal Code, approved in June 2005, child pornography, human trafficking, the illegal removal and trafficking of organs and sexual exploitation are classed as offences and new forms of slavery.

172. In April 2006, the draft plan was finalized. Its purpose is to promote comprehensive, coordinated action between the various State bodies, civil society and international organizations with a view to recognition of the existence and consequences of the offences of sexual exploitation of children for profit, forced prostitution of women, kidnapping, trading and trafficking in persons; to the development and implementation of specialized systems for combating these evils; and to incorporation of the international legal framework into domestic law so that women, children and adolescents who are, or are at risk of becoming, victims are guaranteed care, protection and restoration of their rights.

173. At present, the Commission is developing appropriate mechanisms for implementing the Plan. This will involve adopting a new executive decree that will officially establish the Inter-Agency Committee and the Technical Secretariat and define the roles of each of the agencies which make up these bodies and which have been in operation since 2004.

174. Prostitution is not illegal in Ecuador. However, anyone promoting or using this activity for exploitation purposes is liable to prosecution under the norms mentioned above. There are no statistical data at national level on the number of men and women involved in prostitution. Partial data only are available from associations of women sex workers, though most women are not members.

175. The 2000 Criminal Code Reform Act (Official Gazette No. 110 of 30 June 2000) created the offence of unlawful trafficking in national or foreign migrants to other countries, laying down sentences of ordinary imprisonment of three to six years for traffickers in persons. The **Criminal Code Reform Act**, published in Supplement 1 of Official Gazette No. 427 of 29 December 2006, increased the penalties for these crimes to long-term imprisonment for four to eight years and a fine of up to forty basic salaries, also punishing those responsible for the care of minors, such as parents, family members, etc. The aim of these provisions is to implement international norms prohibiting unlawful trafficking in persons, such as the International Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Additional Protocol of the Convention against Transnational Organized Crime, against the smuggling of migrants by land, sea and air, to which the State is a party.

176. More information on migrant flows of Ecuadorians to other countries and of foreigners into the country is given in the section on article 12 of these reports.

H. Article 9

177. The right to liberty is guaranteed in article 24, paragraph 6, of the Constitution, which states that no-one shall be deprived of his or her liberty except under an order in writing by a competent authority, for the time and in accordance with the formalities prescribed by law; however, a person caught *in flagrante delicto* may be held without a court order for a period not exceeding 24 hours. Article 24, paragraph 4, of the Constitution provides that anyone who is arrested has the right to be fully informed of the reasons for the arrest, the identity of the

authority ordering the arrest, the identity of the officers making the arrest and the identity of those conducting questioning. No-one may be detained without charge for more than 24 hours. No-one may be kept incommunicado. This provision of the Constitution is implemented under articles 2 of the Criminal Code and the Code of Criminal Procedure which relate to the principle of legality.

178. In order to detain someone, the provisions of article 166 of the current Code of Criminal Procedure must also be observed. The Ecuadorean Criminal Code punishes violations of the right to individual freedom, in Chapter III, Title II, Volume Two, on "Crimes against individual freedom" (articles 180 to 190).

179. Regarding the observation made in paragraph 13 of the Committee's concluding observations, to the effect that close to 70 per cent of the prison population is awaiting trial for a maximum duration of a third of the possible sentence facing them, it should be noted that, in accordance with article 24, paragraph 8, of the Constitution, "pretrial detention shall not exceed six months for offences punishable by detention, or one year for offences punishable by imprisonment. Should these limits be exceeded, the pretrial detention order shall be void, in which case the liability of the judge hearing the case is engaged. A detainee shall, in all cases and without any exception, regain his or her freedom once a decision of stay of sentence or acquittal has been handed down, without prejudice to any pending inquiry or appeal".

180. In the year 2000, 753 detainees were released in line with this norm, according to that year's Statistical Bulletin of the Department of Social Rehabilitation.

181. However in 2002, the Untried Prisoners Unit of the National Council of the Judiciary pointed out that since the current Constitution had entered force, detainees' defence lawyers had increased procedural practices and incidents that tended to obstruct and delay the proceedings, with the aim of overrunning the deadlines laid down in the above-mentioned constitutional norm (article 24, paragraph 8) and requesting the repeal of the detention order; this is in addition to delays in the prosecutor's investigations and with reports by the Judicial Police.

182. In offences relating to drug trafficking, for example, trial hearings did not take place owing to: a) constant absence of the defendant's counsel; b) refusal of the detainee to be defended by the public defenders appointed by the courts and, on other occasions, c) by the inexplicable failure of detainees to appear, as they were not released in time by the prison authorities

183. These circumstances delay the proceedings so that the courts do not manage to bring the defendants to trial within the deadlines allowed for pretrial detention, laid down in article 24, paragraph 8 of the Constitution. This constitutional provision is designed to protect detainees whose criminal trials are delayed owing to judicial negligence; however, in the above cases there is no negligence as the delays are in fact caused by the incidents reported.

184. The Supreme Court of Justice and the National Council of the Judiciary are urging judges of criminal cases to expedite criminal proceedings by giving priority to those involving a pretrial detention order.

185. Article 167 of the new Code of Criminal Procedure, in force since 31 July 2001, governs pretrial detention and lays down the circumstances in which it may be used: "to ensure the presence of the accused or the defendant at the trial, or to ensure that he or she serves the sentence; to order pretrial detention whenever the following requirements are met: a) sufficient evidence of the commission of a criminal offence; b) clear and precise evidence that the accused has committed or is an accomplice to the offence; and, c) that it is an offence punishable by a custodial sentence of at least one year.

186. Article 174 of the Code of Criminal Procedure states that the effects of the order for pretrial detention or detention [*detención en firme*] are suspended where the accused provides a satisfactory bail to the competent judge, which may consist of cash, a surety, security, mortgage or letter of guarantee from a financial institution.

187. "Detención en firme" was included in article 173-A of the Code of Criminal Procedure, as amended in January 2003, in order to ensure the presence of the accused during the trial. When issuing a committal order, the court must order the detention [*detención en firme*] of the accused" except in the following cases:

a) for anyone suspected of being an accessory;

b) for anyone being tried for an offence punishable by a custodial sentence not exceeding one year. Where the accused is already subject to pretrial detention, when the committal order is being issued, it will be changed to *detención en firme*." In other words, once the committal order had been issued with *detención en firme*, pretrial detention was eliminated from that point in the proceedings.

188. In January 2004, the Supreme Court of Justice held meetings with the representatives of detainees requesting the release of those held in pretrial detention and who had passed the deadline laid down by the Constitution for their release. As a result, in its decision of 14 January 2004, the Court ruled that criminal proceedings initiated before 13 January 2003 would not be subject to *detención en firme*, as referred to by Articles 10, 16, 28 and 34 of Law 2003-101, reforming the Code of Criminal Proceedings, published in Official Gazette No. 743 of 13 January 2003, mentioned above. Accordingly, in those proceedings the judge or court declared the order for *detención en firme* to be void because it was invalid. This decision had binding effect. It enabled a number of detainees to be released, which helped to reduce overcrowding in the prisons and detention centres.

189. The Supreme Court of Justice applied article 24, paragraph 2 of the Constitution of the Republic which states that in the event of conflict between two laws laying down penalties, the less severe one is to apply, even where it was enacted after the date of the infringement; in case of doubt, the law containing penalties is to be applied in the most lenient way to the defendant; this is in line with articles 2 of the Criminal Code and Code of Criminal Procedure.

190. Owing to the above and the social connotation of applying the legal concept of *detención en firme*, this was done only for proceedings initiated on or after 13 January 2003. This legal provision was called into question by the State authorities, civil society and prisoners, which led to a constitutional appeal that was accepted by the Constitutional Court, which declared that judicial use of *detención en firme* and the articles of the Code of Criminal Procedure that

governed it were unconstitutional. The decision of the Constitutional Court was published in Official Gazette No. 382 of 23 October 2006. Therefore, *detención en firme* was revoked in law.

191. The following table shows that from the entry into force of the current Constitution and the new Code of Criminal Procedure, the number of complaints for violations of due process and arbitrary detentions fell between 1998 and 2006, while the number of constitutional *amparo* actions increased.

TYPE AND NUMBER OF PROCEDURES SUBMITTED AT NATIONAL LEVEL TO THE OFFICE OF THE OMBUDSMAN, 1998-2006

* TYPE OF PROCEDURE	*1998 1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*TOTAL*	*%*
Complaints	10 920	15 171	16 397	17 686	18 046	18 749	23 612	32 543	153 124	**31.05**
Habeas corpus	841	1 768	686	695	381	321	215	194	5 101	**1.039**
Habeas data	49	70	34	69	9	5	15	16	267	**0.054**
Amparo	178	594	148	872	93	136	126	134	2 281	**0.464**
Legitimacy reports	310	124	124	102	89	98	108	105	1 060	**0.216**
Inquiries	NA	31 998	37 976	41 634	48 409	63 146	52 680	43 833	319 676	**65.09**
Repatriations	0	0	14	103	139	116	124	84	580	**0.118**
Total	**12 298**	**55 379**	**55 379**	**61 161**	**67 166**	**82 571**	**78 875**	**78 915**	**491 744**	**100**

Source: Office of the Ombudsman: Directorate for Communication, Lcdo. Santiago Acosta

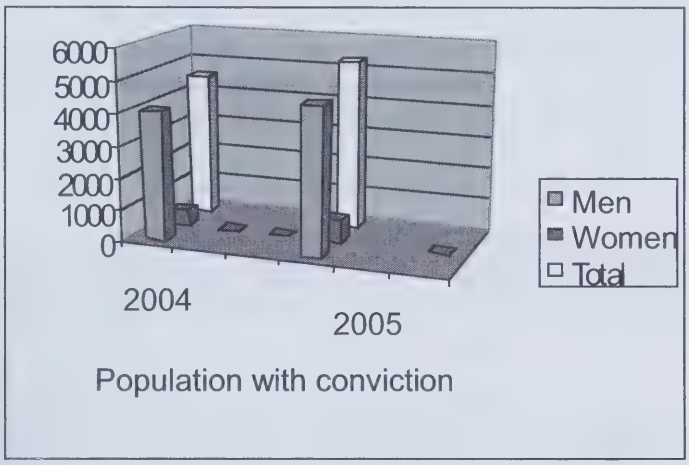
192. The statistics of the National Directorate for Social Rehabilitation in the table below show the legal situation of the convicted prison population, with changes in 2005, (4 594 men and 715 women) in relation to 2004, with 4 057 men and 499 women. There was an increase in the **sentenced prison population**, as shown by the behaviour of this variable, attaining 41.5 per cent in 2005 as against 40.11 per cent in 2004, while in 2005 the charged but unsentenced population was 58.5 per cent[23].

[23] It is worth noting from the same source that, between 2001 and 2002 there was an increase from 29.10% to 37.62% of sentenced population, though the population charged but not sentenced stood at 62.38%; from this we deduce that three years later, this population had decreased by 4%; in contrast to the sentenced prison population in 2005 which was 40.11%, up 3% since 2002. (National Directorate for Social Rehabilitation – DNRS).

Population distribution of inmates by legal situation, 2004-2005

Prison population	Convicted population 2004	Percentage of prison population with conviction	Population charged but not sentenced	Convicted population 2005	Percentage of sentenced prison population	Population charged but not sentenced
Men	4 057			4 594		
Women	499	**40.11%**	**41.5%**	715		**58.5%**
Total	**4 556**			**5 309**		

Source: National Directorate for Social Rehabilitation (DNRS)



I. Article 10

193. Article 208 of the Constitution, on the prison system, states that detainees are entitled to physical and mental health care, while convicts are to be provided with education and work, fundamental aspects of social welfare and prison treatment to enable proper social reintegration. Chapter VII, Title II of Volume Two of the Ecuadorian Criminal Code lays down penalties for offences against prisoners and detainees.

194. According to the current Code of Execution of Sentences, of 1982, the execution of the sentence is the responsibility of prison staff, which has led to a number of implementation problems through lack of training, coaching, instability and corruption. The current Code of Execution of Sentences lays down general guidelines for the rehabilitation of prisoners, which are insufficient and there are still many legal loopholes.

195. The current law governing the prison system is based on the individual nature of sentences as enshrined in criminal law, and therefore applies individual treatment. It lays down the progressive system, which is the set of technical and administrative actions by means of which the inmate serves his or her sentence in each of the centres determined by the law.

196. The Code of Execution of Sentences states that the prison system is independent. As soon as a person is sentenced they are no longer subject to the court's jurisdiction and now depend on the prison system, and are later passed back as legal benefits are granted (conditional release).The current Code of Execution of Sentences does not recognize the inmate as a subject of rights, but rather as a subject of control, owing to the positivist thinking that inspired it.

197. The Code of Execution of Sentences was applied in only 40 per cent of cases, while it was not observed in 60 per cent of them, on account of difficulties in application, such as the classification of the social rehabilitation centres, biotypology classification of the population, classification of the population by risk, changes of regime, etc., among others as a result of the lack of prison policies, political decision for taking certain measures, trained and specialist human resources, financial resources and physical infrastructure.

198. The majority of the prison population comes from low social strata. In addition is the feminization of poverty, demonstrated by the fact that 71 per cent of women prisoners have committed drug trafficking offences, 11 per cent crimes against property and 5 per cent against human life. Some statistics on the prison population Ecuador are given below:

PRISON POPULATION BY YEAR, 1999-2006

PRISON POPULATION BY YEAR	1999	2000	2001	2002	2003	2004	2005
MEN	7 419	7 087	7 157	7 497	**8 379**	9 647	10 972
WOMEN	776	718	581	777	978	1 097	1 248
Provisional detention centre		224	121	449	509	614	570
TOTAL	**8 195**	**8 029**	**8 759**	**8 723**	**9 866**	**11 358**	**12 790**

Source: Statistical bulletins, National Directorate for Social Rehabilitation

POPULATION OF INMATES BY LEGAL SITUATION AND BY YEAR
POPULATION OF INMATES TRIED

INMATES BY YEAR	1999	2000	2001	2002	2003	2004	2005
MEN	5 023	4 420	5 075	4 906	5 808	6 172	6 910
WOMEN	485	439	376	535	629	630	571
TOTAL	**5 508**	**4 859**	**5 451**	**5 441**	**6 437**	**6 802**	**7 481**

Source: Statistical bulletins, National Directorate for Social Rehabilitation

POPULATION OF INMATES WITH CONVICTIONS

INMATES BY YEAR	1999	2000	2001	2002	2003	2004	2005
MEN	2 216	2 667	2 082	3 019	3 054	4 057	4 594
WOMEN	291	279	205	263	375	499	715
TOTAL	**2 507**	**2 946**	**2 287**	**3 282**	**3 429**	**4 556**	**5 309**

Source: Statistical bulletins, National Directorate for Social Rehabilitation

PRISON POPULATION GRANTED LEGAL BENEFITS, BY YEAR

BENEFIT BY YEAR	1999	2000	2001	2002	2003	2004	2005
REDUCTIONS	2 299	1 611	911	1 433	847	1 163	1 152
PRE-RELEASE		397	1 989	40	56	126	176
TOTAL		**74**	**23**	**1 473**	**903**	**1 289**	**1 328**
		753					

Source: Statistical bulletins, National Directorate for Social Rehabilitation

POPULATION OF FOREIGN INMATES BY YEAR

POPULATION BY YEAR	1999	2000	2001	2002	2003	2004	2005
MEN	840	869	679	1 337	919	1 175	1 978
WOMEN				169	217	259	337
TOTAL				**1 506**	**1 136**	**1 434**	**2 315**

Source: Statistical bulletins, National Directorate for Social Rehabilitation

PRISON POPULATION BY INSTALLED CAPACITY AND BY YEAR

YEAR	1999	2000	2001	2002	2003	2004	2005
INSTALLED CAPACITY	6 093	6 117	6 831	6 831	6 831	7 463	7 575
NUMBER OF INMATES	8 520	8 029	7 859	8 723	9 866	11 427	12 790
DIFFERENCE	**- 2 427**	**-1 912**	**-1 028**	**-1 579**	**-3 325**	**-3 964**	**-5 215**

Source: Statistical bulletins, National Directorate for Social Rehabilitation

199. According to prison statistics for 2002, 32.27 per cent of the prison population was charged with offences against property, 30.67 per cent for drug trafficking offences, 17.57 per cent for offences against persons, 7.31 per cent for sexual offences, and 12.23 per cent for other types.[24] These figures show that offences against property are the most common type, followed by drug trafficking, other types of offences being substantially less common.

200. The application of the Narcotic and Psychotropic Substances Act contributed to the increase in the prison population, as in the case of detainees accused of drug trafficking, the Act deprives them of the benefits laid down in the Code of Execution of Sentences relating to reductions in sentences and pre-release, which is at odds with the provisions of article 23, paragraph 3 of the Constitution, which states that all citizens are equal before the law.

201. As we saw in the information on article 9, the concept of *detención en firme*, in force between January 2003 and October 2006, led to a rise in the prison population from the time it was introduced. Thus, the prison population rose by 8.45 per cent from 8 723 in January 2003 to 10 180 in 2004. Of this number, 13.8 per cent were in *detención en firme*.[25]

202. The average male population in social rehabilitation centres is 7 497, or 89.7 per cent, while the female population is 777 or 10.3 per cent. Aliens account for 18 per cent of the prison population (1 173 persons at June 2005). Of these, 47 per cent are Colombians, followed by Peruvians at 8.1 per cent and Spaniards at 6.2 per cent. Those who commit the most offences and are imprisoned in the social rehabilitation centres are in the 18 to 39 age group (69 per cent), 18 per cent are aged 40 to 49, while 7 per cent are over 50. The level of education of inmates of the social rehabilitation centres is as follows: primary 41 per cent, secondary 36 per cent, higher 9 per cent, illiterate 11 per cent. The prison population is made up as follows by civil status: unmarried 39 per cent, married 22 per cent, couple or cohabiting 29 per cent, widows/widowers 2 per cent and divorcees 2 per cent. Of the prison population, 61 per cent are awaiting trial while 39 per cent have been sentenced.

203. There are 36 social rehabilitation centres spread throughout the country by geographical area: 13 in Costa, 20 in Serra and three in Amazonia. The highest concentrations of prison population are in: Guayaquil men's prison with an average of 2 841 inmates, Quito No. 1 men's prison with 802 inmates, followed by the Quito No. 2 men's prison with 900 inmates on average; while there are prisons with a minimal population such as Alausí and Zaruma, with an average of 12 and 13 inmates per month.

204. The prison system can physically house 7 575 inmates, while the demand up to 2005 was for 12 790 places, a deficit of 5 215 places. The average space available to a detainee is approximately 13 square metres, including transit and recreation areas. Some premises were not built as cells but have been adapted, even where there was little physical space, by extending

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[24] National Directorate for Social Rehabilitation: Statistical Bulletin, 2002.

[25] Statistical data of the Planning Department of the National Directorate for Social Rehabilitation, January 2004.

them. Furthermore, the conditions of basic services such as the shortage of mains water in certain prisons are causing serious health problems for the inmates.

205. The State has set a food budget of one dollar a day per prisoner, for three meals a day: breakfast, lunch and dinner, which is not enough money to provide balanced meals containing the necessary proteins and vitamins. Despite the scant resources available, the social rehabilitation centres endeavour to provide food that is a nutritious as possible. The staff responsible for serving meals is not suitable. Most prisoners do not use the refectories and the insufficient food distributed to most inmates leads to disorder, violence and irritation.

206. For the physical and mental care of the inmates, the social rehabilitation centres have 54 psychologists, 61 social workers and 84 health professionals (doctors and 26 dentists). They provide cover for the inmates' problems that are related to respiratory infections and infectious and contagious diseases. Psychological and psychiatric care is insufficient and in some centres is non-existent, meaning that hardly any personality disorders are treated. Furthermore, there is a lack of specialist staff in this field.

207. One of the main causes of the lack of comprehensive care for detainees is the poor provision of medical implements and instruments, and especially medicines and consumables for treating diseases, and the lack of hired specialist staff. The main reason for this has been the lack of State budget for prisons.

208. Each centre provides social and legal services. The social services are responsible for social and family support measures (placing of children in day-care centres), medical support (referrals to hospitals and provision of medicines), administrative procedures (obtaining birth certificates and identity cards). The legal staff are responsible for processing release papers.

209. Violence in prisons is caused by traumatic injuries (25 per cent), drug use (15 per cent) and diseases (56.57 per cent); there is clearly a lack of control for dealing with violence. Regarding personal contact between guards and prisoners, they make certain inmates responsible for discipline; the guards are present but do not control the prisoners.

210. In view of the State party's difficulties in improving the situation in the prison system, the State, with the support of civil society and prisoners, has drafted a **Bill on the Organization of Execution of Sentences**, which governs the operation of the system in detail, on the basis of the Constitution and the international conventions and treaties signed and ratified by Ecuador, related to the execution of sentences and prison administration. This bill is also supported by the Operational Human Rights Plan for Prisons of the National Human Rights Plan and was submitted to Congress for information, debate and approval in 2003. The Bill contains the following new features:

a) It is grounded in Ecuador's 1998 Constitution and international human rights law relating to the principles, rights and guarantees for prisoners, based on human dignity, laying down rules for treatment, rehabilitation and social reintegration in accordance with those principles;

b) The system has an autonomous administrative and financial structure, to give it a technical vision that enables clear policies for social reintegration, by means of: the establishment of an independent social rehabilitation agency, a senior technical and scientific body whose members have a defined profile associated with criminal law, criminology and human rights; the creation of regional subcommittees and the selection, training and specialization of prison staff, with the setting-up of a prison academy;

c) The institution of Criminal Execution Judge with powers of control, decision and inquiry for custodial sentences. The Act governs the release of persons having served their sentences and establishes post-prison assistance;

d) It classifies prisons as follows: social rehabilitation centres, provisional detention centres and special centres, for vulnerable groups such as the terminally ill, older persons, the mentally ill and pregnant women, who require specific assistance and treatment;

e) It establishes the participation of civil society in the administration of prisons, as provided for in the Constitution, and the supervision and accountability of officials in the System, including the judicial and administrative control of the competent national bodies, to understand and investigate all the technical and administrative aspects of the prison system.

211. Owing to the serious political and institutional crisis facing Ecuador in 2004 and 2005, that led to the removal of President Lucio Gutiérrez from power, this Bill has yet to be approved and is due to be discussed in a first debate of the present Ecuadorian Parliament.

212. Moreover, as mentioned in paragraphs 49 and 149 of these reports, the State is implementing the **Human Rights Operational Plan for Prisons,** approved in 2003, as part of the National Human Rights Plan, under which it has carried out training activities in human rights for prison staff, including guides, medical and administrative staff, of the 36 prisons in the country, by means of provincial and national workshops and the publication and dissemination of training texts referred to in paragraph 49. It has also signed multilateral and bilateral agreements for the execution of sentences abroad, with the aim of reducing prison overcrowding, whereby foreign convicts are transferred to their countries of origin. A number of detainees have been transferred to Colombia and Spain. Of 801 requests to Colombia, 358 have been resolved satisfactorily since 1994. Of 137 requests to Spain, 75 detainees have been allowed to transfer since 1997.[26]

213. At the end of 2006, the Constitutional Court published a decision in the Official Gazette No. 382 of 23 October 2006 declaring **judicial use of *detención en firme* to be unconstitutional**, along with the articles of the Code of Criminal Procedure governing that measure.

[26] Information supplied by the Presidency of the Supreme Court of Justice, the central authority for these agreements. Dr Alberto Arias, by telephone.

J. Article 11

214. Article 23, paragraph 4, of the Constitution establishes that no person shall be imprisoned for debts, costs, fees, taxes, fines or other obligations except in the case of family maintenance. This provision and domestic law are in accordance with the provisions of the Covenant.

215. This provision has not, however, always been observed. Infringements have occurred, particularly in rural areas. In cases of unpaid debts that came to the attention of the authorities, penalties involving deprivation of liberty were imposed. In order to rectify this situation, since 1994 police superintendents have not had the power to issue arrest warrants. This power was withdrawn to avoid abuses. [27]

216. At present, the powers of police superintendents are restricted to carrying out inquiries to establish material proof, notifying protests against cheques and carrying out the procedural acts ordered by their superiors.

K. Article 12

217. Article 23, paragraph 14, of the Constitution lays down "the right to cross the national territory freely and to choose one's residence". Ecuadorians are free to enter and leave Ecuador. Aliens must abide by the provisions of the law. An order not to leave the country may be issued solely by a competent judge, on the grounds provided for by law". The National Police of Ecuador, through the Department of Migration, monitors nationals and aliens leaving and entering the country in accordance with the Migration Act and in respect of their rights. Ecuadorians and aliens in Ecuador are free to take up residence in any part of the country and in the country of their choice.

218. Restriction orders and orders not to leave the country are preventive measures to ensure appearance in court in cases of non-payment of alimony and to prevent the kidnapping and trafficking of minors.

1. Legal basis for restriction orders and orders not to leave the country

219. Article 16 of the regulations issued under the Migration Act entrusts chiefs of migration with a delicate and highly responsible duty, particularly the task of checking the records of restriction orders and orders not to leave the country. Chiefs of migration may not authorize the departure from the country of a person who has been ordered not to leave or against whom legal proceedings are under way. For the latter, it is sufficient for the authorities to have served an initiating order, indicating the names of those charged.

220. The files are kept responsibly, well organized and up to date. The authorities issuing restriction orders and orders not to leave the country must comply with article 18 of the

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[27] Suspension of the issue of arrest warrants by police chiefs, Official Gazette No. 574 of 23 November 1994; partial powers of police chiefs, Official Gazette No. 848, Law No. 104 of 22 December 1995.

regulations issued under the Migration Act, with the aim of ensuring that judicial provisions are up to date.

221. Article 18 of the regulations issued under the Migration Act refers to restriction orders and orders not to leave the country issued by the judicial authority. Orders must clearly express such decisions and contain the full personal details and identity card number of the person in question in the corresponding notification to the Department of Migration of the National Police. The judge or court issuing this measure must renew it every six months for it to remain in force.

222. The judicial authority issuing the order not to leave or restriction order may cancel such provisions by means of another order to the migration authorities.

2. Procedures for orders not to leave and restriction orders

223. Any order not to leave the country issued by the competent authority must be immediately communicated to the Department of Migration, which in turn must inform Ecuador's various police headquarters. The same procedure is followed when an order not to leave the country is lifted.

224. All restriction orders and orders not to leave the country must clearly indicate the number of the restriction order, which is entered in the corresponding register, recording the time of submission of the document by the relevant authority.

225. Chiefs of migration must contact the competent authorities to obtain additional information about the identity of the persons concerned by the restriction order or order not to leave the country. They ask for this information to be confirmed in writing, in order to provide the Department of Migration with backup and evidence.

226. Restriction orders and orders not to leave the country are not destroyed. They must be stored in what are known as "passive files" for the purposes of any subsequent claim or request made to interested parties.

227. An arrest warrant issued by any authority constitutes an order not to leave the country and the individual in question is therefore arrested and immediately handed over to the relevant authority.

228. The right to leave one's country and return is also guaranteed by related legislation such as the Travel Documents Act (Law No. 11, Official Gazette 132, 20 February 1989), which contains the regulations for obtaining the necessary documents to leave and return to Ecuador.

229. The following articles of Chapter VI of the Travel Documents Act make reference to the procedure for obtaining ordinary passports for Ecuadorians:

> "Article 12 - Ecuadorians wishing to obtain an ordinary passport must apply using the relevant form of the Ministry of Foreign Affairs.

"Article 13 - Naturalized Ecuadorians wishing to obtain an ordinary passport require prior authorization from the Ministry of Foreign Affairs. Those residing abroad for an uninterrupted period of longer than three years lose the right to hold the aforementioned passport, in accordance with article 16, paragraph 4, of the Naturalization Act, except in cases where the absence was for reasons duly justified under the Act in the judgment of the above-mentioned State Secretariat.".

230. Entry of aliens is governed by the Migration Act. Generally speaking, all aliens can enter the country freely. For some countries, for reasons of reciprocity, Ecuador requires an entry visa. In all other cases, aliens enter as tourists for a period of three months, which may be extended for a similar period. Ecuador grants special visas to aliens entering the country for the purpose of intercultural exchange, study or employment.

ECUADORIANS AND ALIENS ENTERING AND LEAVING, 1998-2005

	ECUADORIANS			ALIENS		
YEAR	ENTRY	EXIT	DIFFERENCE	ENTRY	EXIT	DIFFERENCE
1998	234 250	274 995	-40745	471 009	349 363	121 646
1999	294 547	385 655	-91108	517 670	408 646	109 024
2000	344 052	519 974	-175922	627 090	444 926	182 164
2001	423 737	562 067	-138330	640 561	464 781	175 780
2002	461 396	626 611	-165215	682 962	487 546	195 416
2003	458 971	613 106	-154135	760 776	519 801	240 975
2004	525 578	599 304	-73726	816 194	629 497	186 697
2005	598 722	670 799	-72077	860 784	682 812	177 972
			-911258			1 389 674

Ecuadorians staying abroad	**911 258**
Aliens staying in Ecuador	**1 389 674**

Source: Department of Migration

231. The above table shows the normal flow of Ecuadorians and aliens leaving and entering Ecuador, which indicates the total freedom to leave and return to Ecuadorian territory, in accordance with the law. The tables below give details of passports issued for leaving the country between 2003 and 2006 and in 2001, when the old passport was issued.

Passports issued from 2003 (when the new passport was introduced) to 2006

RPRT	LCTN _Code	LCTN_ Name	Ordinary_ psprt	Diplomatic_ ps	Official_ ps	Special_ ps	Foreign_ psprt	Total
2003	2	Quito	11 897	131	98	112	55	12 293
2003	3	Guayaquil	6 801	5	9	13	3	6 831
2003	4	Cuenca	1 753	0	0	0	0	1 753
2004	2	Quito	66 482	661	650	652	412	68 857
2004	3	Guayaquil	56 077	42	65	55	9	56 248
2004	4	Cuenca	20 165	0	0	1	1	20 167

RPRT	LCTN_Code	LCTN_Name	Ordinary_psprt	Diplomatic_ps	Official_ps	Special_ps	Foreign_psprt	Total
2004	5	New York	15 649	7	0	0	0	15 656
2004	6	New Jersey	5 048	2	0	0	0	5 050
2004	7	Caracas	857	1	0	0	0	858
2004	8	Madrid	8 899	2	0	0	0	8 901
2004	9	Milan	2 257	0	0	0	0	2 257
2004	32	Los Angeles	634	0	0	0	0	634
2005	2	Quito	73 232	652	692	670	375	75 621
2005	3	Guayaquil	62 076	36	161	173	13	62 459
2005	4	Cuenca	20 931	0	3	3	0	20 937
2005	5	New York	23 001	0	0	1	0	23 002
2005	6	New Jersey	8 721	4	0	1	0	8 726
2005	7	Caracas	2 069	6	1	0	0	2 076
2005	8	Madrid	23 243	1	0	0	0	25 244
2005	9	Milan	5 599	2	0	0	0	5 601
2005	32	Los Angeles	1 084	0	0	0	0	1 084
2006	2	Quito	56 872	348	371	407	200	58 198
2006	3	Guayaquil	47 796	6	84	73	8	47 967
2006	4	Cuenca	13 564	0	0	1	0	13 565
2006	5	New York	16 039	1	0	0	0	16 040
2006	6	New Jersey	7 749	0	0	0	0	7 749
2006	7	Caracas	1 512	4	0	0	0	1 516
2006	8	Madrid	19 978	6	0	0	0	19 984
2006	9	Milan	4 796	0	0	0	0	4 796
2006	32	Los Angeles	649	0	0	0	0	649
Total			587 430	1 917	2 134	2 162	1 076	

Passports issued in 2001

Governor's office	January	February	March	April	May	June	July	August	September	October	November	December	Total	Monthly average	%
Azuay	2 999	1 839	2 900	2 990	3 757	2 791	3 246	3 598	1 831	1 738	1 732	1 506	30 927	2 577	8.24
Bolivar	0	0	0	0	0	0	0	40	14	11	29	37	131	26	0.03
Canar	0	0	0	0	0	0	0	0	0	184	265	302	751	250	0.20
Cotopaxi	110	169	202	513	339	281	283	233	178	191	222	220	2 941	245	0.78
Chimborazo	283	295	470	858	769	552	684	520	310	572	526	507	6 346	529	1.69
Esmeraldas	463	245	396	515	522	433	450	382	347	428	445	403	5 029	419	1.34
El Oro	1 590	953	1 383	2 165	1 676	1 956	1 837	1 382	1 164	1 342	1 727	1 491	18 666	1 556	4.97
Guayas	8 773	7 041	8 284	9 063	10 442	8 756	8 343	8 340	6 559	7 437	8 209	7 315	98 562	8 214	26.26
Imbabura	469	377	686	900	752	664	688	545	385	571	597	429	7 063	589	1.88
Loja	910	396	704	1 182	1 463	1 339	1 586	1 186	1 009	1 365	1 371	1 118	13 629	1 136	3.63
Manabi	1 820	1 309	1 498	3 146	1 586	1 454	1 474	1 426	1 087	1 293	1 576	1 557	19 226	1 602	5.12
Pichincha	8 094	5 413	7 733	10 943	12 769	11 111	11 858	10 474	6 762	7 896	7 785	7 277	108 115	9 010	28.81
Tungurahua	1 377	541	866	1 280	1 359	1 153	1 449	1 191	695	955	1 110	1 087	13 063	1 089	3.48
UIO-Oficial	37	39	34	74	91	63	34	42	20	29	108	24	595	50	0.16
UIO-Especial	45	55	49	152	73	140	60	99	44	57	63	26	863	72	0.23
UIO-Diplom	47	34	59	117	61	43	62	29	18	18	13	23	524	44	0.14
UIO-Azul	12	23	19	36	9	12	39	54	26	19	13	11	273	23	0.07
GYE-Oficial	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
GYE-Especial	0	0	0	0	0	0	0	0	0	0	0	2	2	0	0.00
GYE-Diplom	0	0	0	0	0	0	0	0	0	0	0	3	3	0	0.00
GYE-Azul	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
National total	27 029	18 729	25 283	33 934	35 668	30 748	32 093	29 541	20 449	24 106	25 791	23 338	326 709	27 226	87.06
Consulates	4 796	4 395	4 751	4 357	3 962	4 047	4 521	4 115	2 843	1 306	6 390	3 086	48 569	4 047	12.94
									Total number of passports issued in 2001				375 278	31 273	100.00

Total income for the Ministry of Foreign Affairs	
National	3 267 090
Consulates	5 342 590
Total revenue	8 609 680

L. Article 13

232. Ecuadorian legislation makes no provision for expulsion, only **deportation and exclusion**. The Migration Act expressly sets out the grounds on which aliens may be deported. In no circumstances may an alien who is legally in the country be deported, unless there is an extradition request, duly justified by the requesting country, based on current criminal or judicial cooperation agreements or where he or she may not be tried in Ecuador for an offence committed outside the country. The Migration Act also sets out grounds for excluding aliens from entering the country, again for reasons of illegal immigration or breaches of the law committed abroad.

233. Article 19 of the Migration Act sets out the grounds for deportation of aliens from the country, which are basically related to the causes of migration irregularities, such as entering the country illegally or staying in the country longer than allowed by law. Article 19, paragraph III, also provides for deportation for aliens who have served a criminal sentence or have been pardoned for a particular sentence in Ecuador and have failed to regularize their migrant status in the country, and paragraph IV of the same article for aliens who may not be tried in the country for breaches of the law.

234. Article 29 of the Constitution of the Republic states that Ecuador recognizes aliens' right to asylum. In accordance with this norm, the Aliens Act (enacted by Supreme Decree 1897, Official Gazette 382 of 30 December 1971) provides in article 6 that the Government of Ecuador may admit as refugees aliens displaced as a result of war or political persecution in their country of origin to safeguard their life or freedom, in accordance with any relevant international agreements or, failing that, with domestic law.

235. Article 15 of the Migration Act and the regulations for implementation of the provisions of the 1951 Convention and its Protocol, issued through Executive Decree No. 3316 of 6 May 1992, prohibit the expulsion or refusal of entry at the border of foreign asylum-seekers or refugees; accordingly, they may not be deported to their country of transit or origin, whatever their migration status. This is a temporary prohibition until their refugee or asylum-seeker status is determined by the Eligibility Committee of the Ministry of External Relations. This provision guarantees the principle of non-return, as per the Geneva Convention on the Status of Refugees and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment.

236. These provisions have been scrupulously observed by the Ecuadorian authorities; to date there have been no complaints of deportation of citizens to territories in which there was a possible threat to their physical integrity or personal freedom.

237. Article 37 of the Migration Act prescribes deprivation of liberty for foreign citizens committing migration offences. The Criminal Code prescribes detention for flagrant offences involving the use of travel and identity documents, such as: identity theft, falsification of public documents, use of false seals or visas, adulteration of passports, etc. Under the Migration Act, sentences for such offences range from six months' to three years' imprisonment.

238. Under article 23 of the Migration Act, the competent authority for the deportation or expulsion of aliens is the police commissioner, subject to the observance of due process. Investigation in such cases is subject to the provisions governing due process contained in article 24 of the Constitution and in the Code of Criminal Procedure.

1. Deportation procedure

239. The police commissioner for each province initiates the procedure on the basis of an express report of the police officer of the Migration Department, the respective notification of the judge or court, the director of the prison institution or the Director of the Consular Department of the Ministry of External Relations.

240. Under articles 25 and 26 of the Migration Act, it is a completely summary procedure in which the police commissioner convenes a hearing, within no more than 24 hours of the criminal investigation, in which to decide on the deportation measure. The Office of the Public Prosecutor, the foreigner and his or her private or appointed defence counsel and, if applicable, the representative of his or her Government accredited in Ecuador take part in the proceedings. They present documentation and make arguments of fact and law relating to the deportation action.

241. Within 48 hours, the commissioner issues a ruling, which is not subject to administrative or judicial appeal, unless the deportation of an alien has been temporarily stayed, in which case the it must be brought before the Minister of the Interior within five days of receipt of the police commissioner's ruling (articles 28, 20 and 30 of the Migration Act). Where there is a stay in the proceedings to deport an alien, he or she is entitled to sue for damages (article 29 of the Migration Act).

242. The Department of Migration is responsible for implementing deportation orders. A deported foreigner may be transferred, in priority order, to the country from which he or she entered, the country from which he or she embarked for Ecuador, the country of origin, the country of domicile before entry, or another country that accepts the person (article 35 of the Migration Act).

243. The table below shows statistics for aliens deported, detained for migration offences and excluded, i.e. refused entry to the country, in 2004.

MIGRATION STATISTICS, 2004

POLICE AUTHORITY	DEPORTEES	DETAINEES	REFUSED ENTRY
PICHINCHA	1105	415	122
GUAYAS	613	194	151
EL ORO	234	166	1
MANABI	201	63	1
IMBABURA	200	302	0
CARCHI	78	73	0
AZUAY	67	67	0
TUNGURAHUA	59	56	0
LOJA	35	46	1
CAÑAR	21	13	0
CHIMBORAZO	16	38	0
NAPO	14	12	0

POLICE AUTHORITY	DEPORTEES	DETAINEES	REFUSED ENTRY
PASTAZA	13	13	0
ZAMORA CHINCHIPE	9	4	0
ESMERALDAS	7	26	0
COTOPAXI	4	1	0
BOLIVAR	2	18	0
SUCUMBIOS	2	22	0
MORONA SANTIAGO	1	2	0
GALÁPAGOS	0	0	0
LOS RÍOS	0	6	0
TOTAL	**2681**	**1537**	**276**

Source: Department of Migration

244. The State has made efforts to legalize the residence of illegal foreign immigrants, where possible avoiding deporting them from the country.

245. The armed conflict in Colombia, and especially the implementation of the Colombia Plan since the year 2000, has had repercussions for Ecuador in terms of security, migration, environment, health and the labour market. The high level of violence that Colombia is experiencing on account of its internal armed conflict has forced many of its inhabitants to leave the country, in search of somewhere offering them peace and where they can work solely to improve their personal and family situation. Against this background, many have chosen to move to Ecuador, which has increased social problems since the country does not have adequate conditions for them to settle.

246. According to the statistics, the number of Colombians citizens entering and settling in the country has been increasing every year. Thousands of people have entered Ecuador as tourists and have stayed living there illegally, especially in the frontier provinces of Carchi, Imbabura, Esmeraldas and Sucumbíos. Unofficial sources indicate that illegal immigrants may number around 300 000.

247. Similarly, since the signature of the peace agreement with Peru and the adoption of the dollar in Ecuador, there was an increase in the migratory flow of Peruvian citizens entering the country as tourists with the aim of raising their income by working there illegally (some 40 000 people, according to unofficial sources).

Statistics on refugees and asylum seekers in Ecuador

Year	Applications	Accepted	Denied	Lapsed	Cancelled	REA.	REPA.	PEN COM.	PEN.
2000	475	390	60				36		
2001	3.017	1.406	394	999			87		
2002	6 766	1 578	1 199	1 586		4	7		
2003	11 463	3 270	4 392	3 606		157	4		
2004	7 935	2 420	4 200	1 930		379	4		

Year	Applications	Accepted	Denied	Lapsed	Cancelled	REA.	REPA.	PEN COM.	PEN.
2005	7 091	2 435	2 673	1 312	11		0	168	
2006	**7 638**	**2 026**	**2 691**	**2**	**3**	**332**	**3**	**23**	
2000-2006	**44 385**	**13 525**	**15 609**	**9 435**	**14**	**872**	**141**	**191**	**4 598**
Percentage	**100.00**	**30.47**	**35.17**	**21.26**	**0.03**	**1.96**	**0.32**	**0.43**	**10.36**

Source: Ministry of External Relations, Department of Human Rights - Refugees.

248. According to additional data from the Refugees Office of the Ministry of External Relations, out of 44 385 applications submitted between 2000 and 2006, 13 525 refugees were recognized.[28]

M. Article 14

1. Ecuador's judicial system

249. Title VIII "The Judiciary", Chapter I "General principles" of the Constitution of the Republic lays down the organizational and functional structure of Ecuador's judiciary. Article 198 names the bodies of the judiciary: The Supreme Court of Justice, and the courts and tribunals established by the Constitution, the law and the National Council of the Judiciary.

250. Article 199 of the Constitution provides that the bodies of the judiciary must be independent in exercising their duties and powers. No State function may interfere in their own affairs. Magistrates and judges are to be independent in the exercise of their jurisdictional powers, even in relation to the other bodies of the judiciary; they are subject to the Constitution and the law only. Article 200 empowers the Supreme Court of Justice to act as a court of cassation.

251. Article 201 sets out the requirements to be a magistrate of the Supreme Court of Justice. Article 202 states that Court magistrates are appointed for life, elected by the Court itself by means of a co-optation system designed to give them independence and enable them to work autonomously.

252. Transitional provision 26 of the Constitution establishes jurisdictional unity, whereby the magistrates and judges of the executive become part of the judiciary, which includes military judges, police court judges and juvenile court judges. Juvenile court judges became part of the judiciary with the enactment of the Children and Adolescents Code, which entered force in January 2003. Up to 2006 there were 648 courts at national level, distributed in accordance with the following table.

[28] Data at October 2006, source Refugees Office, Directorate-General for Human Rights, Social and Environmental Affairs, Ministry of External Relations and UNHCR.

NUMBER OF COURTS BY PROVINCE

NUMBER OF COURTS BY PROVINCE

PROVINCE	TOTAL COURTS
AZUAY	47
BOLIVAR	22
CAÑAR	26
CARCHI	17
COTOPAXI	20
CHIMBORAZO	29
EL ORO	39
ESMERALDAS	20
GUAYAS	94
IMBABURA	23
LOJA	42
LOS RIOS	32
MORONA	13
NAPO	7
PASTAZA	7
PICHINCHA	84
TUNGURAHUA	28
ZAMORA	12
GALÁPAGOS	6
SUCUMBIOS	10
ORELLANA	7
TOTAL	**648**

NUMBER OF COURTS BY SECTION

SECTION	TOTAL
SUPREME COURT ROOMS	55
DISTRICT ADMINISTRATIVE DISPUTES TRIBUNALS	5
DISTRICT TAX TRIBUNALS	6
CRIMINAL TRIBUNALS	44
CRIMINAL COURTS	156
CIVIL COURTS	249
LABOUR COURTS	30
RENT TRIBUNALS	15
TRANSPORT TRIBUNALS	48
TAX COURTS	6
JUVENILE COURTS	34
TOTAL, ALL JUDICIAL SECTIONS	**648**

Source: Website of the Supreme Court of Justice, www.cortesuprema.gov.ec

253. The current Constitution set up the National Council of the Judiciary as the governing, administrative and disciplinary body of the judiciary. Article 207 provides that, in criminal cases and cases involving employment, maintenance and minors, the administration of justice is free of charge. In other cases, the Council will set the amount of judicial services. These funds are the judiciary's revenue, which is to be collected and administered in a decentralized manner.

254. The Judiciary Council's web portal, at www.cnj.gov.ec, enables the public to obtain information on the status of judicial proceedings in the various courts at national level, by entering the case number or date, pursuant to the new **Freedom of Information Act**, published in Official Gazette No. 337 of May 2006, which requires all State institutions to give the public clear and transparent information on their activities and the results of their work.

255. Article 192 of the Constitution states that the court system is to constitute a medium for the attainment of justice. It must ensure the effectiveness of guarantees of due process and compliance with the principles of direct contact with the judge, swiftness and effectiveness in the administration of justice. Justice is not to be sacrificed solely for technical errors. Article 193 provides that procedural legislation is to ensure that court proceedings are simple, uniform, effective and expeditious. Delays in the administration of justice attributable to the judge or magistrate are punishable by law. Article 194 provides that cases are to be tried orally, including

the submission and examination of the evidence, in accordance with the principle of the initiative of the parties, concentration and direct contact with the judge.

2. New system of criminal procedure in Ecuador

256. Regarding the observations made in paragraph 12 of the Committee's concluding observations, on measures taken to reform criminal proceedings with a view to expediting the process, the State has taken the following action:.

a) In July 2001, a new system of criminal procedure entered force, with the adoption of the new **Code of Criminal Procedure**, which radically altered the functions of each institution involved in the criminal justice system when handling criminal offences, and made the Public Prosecutor's Office responsible for the investigations before and during trial, and directing the investigation. The Public Prosecutor's Office is aware that a major change of culture is required to make the oral system fully effective. Together with the judiciary, it has offered training in the form of ten-week courses throughout the country on oral judicial proceedings, and to that end has trained instructors on the subject;

b) The Code of Criminal Procedure has established effective means of resolving certain criminal conflicts: shortened hearing, conversion, rejection, filing. The 2003 reforms of the Code introduced new alternatives to oral trials that will allow better use of available resources. The judiciary has adapted its facilities to implement the oral system, so as to comply with the constitutional mandate. The oral system is being gradually introduced in criminal proceedings. The system entered force for labour matters in 2003, while arrangements are still being made to introduce it for civil cases.

257. Regarding paragraph 14 of the Committee's concluding observations, on its concern about the long delays in judicial proceedings, the State would reply as follows:

a) Article 23, paragraph 27 of the Constitution of the Republic guarantees the right to due process and justice without delay. The reforms of criminal procedure legislation, aimed at avoiding delays in judicial proceedings, also involve reforms of the laws related to the **National Council of the Judiciary Act** (article 35, letter g) and **The Public Prosecutor's Office Act** (article 37, added to article 20), which make judges and prosecutors administratively and criminally liable where, through negligence or delay in resolving cases, they allow protective measures in suits for collection to lapse, and they are also liable to fines of up to 10 000 dollars and removal from their posts. The Criminal Code, by means of the offence of perversion of the course of justice penalizes judges and judicial or public officials for denying or delaying the administration of justice;

b) On 13 January 2003, in Official Gazette No. 743, new reforms of the law on criminal procedure entered force, which helped to improve the implementation of the Code of Criminal Procedure. The reforms stated that the maximum duration of prosecutors' criminal investigations is 90 days.

c) The State has endeavoured to ensure that criminal proceedings are more flexible and efficient. The Public Prosecutor's Office receives several complaints a day and there are not enough prosecutors, even after the increase, to satisfy users' demand. However, the new

procedural system is better than before, although it has shortcomings that will be polished and improved as it is implemented.

258. The Ecuadorian State has given priority to training justice officials (prosecutors, criminal judges and judicial police) in understanding, analysis and application of the new criminal proceedings rules. However, it has not yet succeeded in training bar associations or detainees, which has limited their ability to defend themselves (article 12 of the Code of Criminal Procedure).

3. Actions of the Public Prosecutor's Office

259. Since the new Code of Criminal Procedure entered force (on 13 July 2001), in 2003, 314 511 criminal complaints were submitted, 212 812 (67.66 per cent) of which had been investigated previously, while the remainder were not recognized by the complainants. Prosecutors initiated 32 203 investigations of these complaints, 25 170 of which (76.16 per cent) concluded with a ruling.[29]

260. In 2005, of 178 340 complaints, 119 914 had been investigated previously, resulting in 17 363 prosecutors' investigations and 13 880 rulings (72.93 per cent), either acquittal decisions (4 766) or convictions (9 114).[30] The statistics show that since the implementation of the new Code of Criminal Procedure the handling of criminal proceedings has been speeded up.

261. One area of progress in the work of the Public Prosecutor's Office is the incorporation of care for victims of crimes, as a cross-cutting line of work, to comply with article 219 of the Constitution, which provides that "the Public Prosecutor's Office shall ensure that victims, witnesses and others taking part in criminal proceedings are protected".

262. In this respect, article 118 of the Code of Criminal Procedure states that "witnesses shall be entitled to the protection of the Public Prosecutor's Office to ensure their personal integrity, their appearance in court and the accuracy of their testimony." Article 3 of Public Prosecutor's Office Organization Act, replaced by article 2 of Law 2000-19 (published in the Official Gazette No. 100 of 16 July 2000), states that the Public Prosecutor's Office has the duty and power to protect victims, witnesses and others involved in criminal trials. Article 16 of that Act lays down the obligation to order victims, witnesses or any of those involved in the investigation before or during the proceedings, whose life or personal safety is at risk, to immediately enter the protection programme in accordance with the relevant Regulation.

263. Article 33 of the Act set up the protection programme for witnesses, victims and others involved in the proceedings and officials of the prosecutor's office, designed to offer protection and assistance to such persons, their spouses and family members up to the fourth degree of blood relationship and the second by marriage relationship, where their lives or personal integrity is at risk as a result of or at the time of their involvement in criminal proceedings.

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[29] Statistics Unit of the Public Prosecutor's Office, 2003.

[30] Ibid., 2005.

264. With the new Code of Criminal Procedure the number of prosecutors has been increased at national level and specialist crime investigation units have been set up within the Public Prosecutor's Office.

4. Actions by criminal courts

265. Regarding the actions of the judiciary, the following table summarizes the movement of criminal proceedings in criminal courts at national level between the years 2000 and 2003, indicating that with the introduction of the new constitutional and criminal procedure rules the number of resolved cases gradually increased after 2001.[31] Before 2001, resolved cases accounted for half of proceedings initiated and this figure doubled in 2003, taking into consideration that cases delayed from previous years were also resolved.

PROSECUTIONS BY PROVINCE

DISTRICT	CRIMINAL TRIALS INITIATED			
	2000	**2001**	**2002**	**2003**
CARCHI	714	534	314	272
IMBABURA	2160	1242	556	579
PICHINCHA	23479	14317	8888	9118
COTOPAXI	2028	1058	286	347
TUNGURAHUA	2213	1376	626	629
BOLIVAR	1253	630	196	275
CHIMBORAZO	1392	923	488	580
CAÑAR	1098	487	330	315
AZUAY	1589	1017	785	915
LOJA	1985	1337	655	1309
ESMERALDAS	1300	694	685	661
MANABI	3917	1752	971	1205
LOS RÍOS	1705	1041	806	823
GUAYAS	8039	5457	5857	6959
EL ORO	2132	933	650	754
SUCUMBIOS	906	435	469	220
NAPO	559	394	195	372
PASTAZA	239	841	285	170
MORONA	484	248	154	174
ZAMORA	385	178	135	462
GALÁPAGOS	32	23	63	41
TOTAL	**57609**	**34917**	**23394**	**26180**

DISTRICT	CRIMINAL TRIALS RESOLVED			
	2000	**2001**	**2002 ***	**2003 ***
CARCHI	1119	869	620	642
IMBABURA	2436	1633	1861	901
PICHINCHA	6393	4295	24870	12418

[31] Statistics of the National Council of the Judiciary, 2003.

DISTRICT	CRIMINAL TRIALS RESOLVED			
	2000	2001	2002 *	2003 *
COTOPAXI	1291	2040	5843	2188
TUNGURAHUA	2274	1757	2811	3708
BOLIVAR	427	381	581	433
CHIMBORAZO	1336	1255	822	873
CAÑAR	438	452	591	269
AZUAY	1648	1386	1206	1301
LOJA	2488	3652	4163	2600
ESMERALDAS	274	1584	3590	2446
MANABI	1361	1044	2544	3193
LOS RÍOS	990	1130	1899	5321
GUAYAS	2523	2996	2548	3597
EL ORO	1118	1156	2727	7713
SUCUMBIOS	122	125	350	590
NAPO	295	237	399	1145
PASTAZA	68	424	963	729
MORONA	347	295	506	645
ZAMORA	110	87	111	152
GALÁPAGOS	3	5	0	6
TOTAL	**27061**	**26803**	**59005**	**50870**

* Includes delayed trials from previous years-

NATIONAL COUNCIL OF THE JUDICIARY
DEPARTMENT OF RECORDS AND MONITORING

Total number of persons charged and sentenced	
2004	
TOTAL SENTENCED	1.373
TOTAL NOT SENTENCED	1.815
2005	
TOTAL SENTENCED	1.025
TOTAL NOT SENTENCED	2.399
2006	
TOTAL SENTENCED	1.869
TOTAL NOT SENTENCED	3.824

Source: National Council of the Judiciary, 2006.

NATIONAL COUNCIL OF THE JUDICIARY
DEPARTMENT OF RECORDS AND MONITORING

Number of personas convicted by criminal courts, by type of offence	
2005	
Murder 2	200
Trafficking in persons	34
Unlawful trafficking in migrants	10
Membership of criminal gangs	25
2006	
Murder	**297**
Trafficking in persons	**35**
Unlawful trafficking in migrants	**10**
Membership of criminal gangs	25
Total number of persons convicted, by gender regardless of offence	
2005	
Total women	**215**
Total men	**1 706**
2006	
Total women	**302**
Total men	**2 754**

Source: National Council of the Judiciary, 2006.

5. Norms of due process

266. Article 23, paragraph 27 of the Constitution guarantees the right to due process. The norms of due process are set out in the 17 paragraphs of article 24 of Ecuador's Constitution, which are in line with article 14 of the Covenant.

267. The constitutional norms must be viewed in the context of the secondary legislation guaranteeing the right to due process: article 4 of the Code of Criminal Procedure, on the presumption of innocence; article 10 of the same Code which states that criminal proceedings are on the motion of the prosecutor and the judge, without prejudice to proceedings on the application of a party. Furthermore the pretrial investigation may not last more than one year for offences punishable by imprisonment or more than two years for offences punishable by long-term imprisonment. Article 13 of the Code of Criminal Procedure states that if the accused does not understand Spanish, he or she may designate an interpreter; otherwise the prosecutor or the court may designate one and the State will cover the costs.

6. The Office of the Ombudsman

268. Article 24, paragraph 10 of the Constitution requires the State to appoint public defenders to support the indigenous communities, workers, women and minors who have been abandoned or victims of domestic or sexual violence and anyone with no financial means.

269. Article 12 of the Code of Criminal Procedure states that the accused is entitled to designate a defender; if he or she does not do so, the judge must designate one before making the opening statement.

270. Articles 74 to 78 of the Code state that the Office of Ombudsman is to have its headquarters in the capital of the Republic, with competence for the whole country and responsibility for supporting accused persons who have not designated a defender. The Office of the Ombudsman is to be organized in accordance with the relevant legislation and corresponding regulations. In places where the supreme courts, criminal tribunals and criminal courts operate, the Office of the Ombudsman is to appoint the necessary number of public defenders. The public defender is to take part until the case is closed, without prejudice to the right of the accused to replace him or her. The accused must be informed of his or her right to choose another defender. The public defender is obliged to act until such time as the accused designates a private defender and the latter accepts the task. The public defender may renounce the defence, but must continue to act until lawfully replaced.

271. Regarding paragraph 14 of the Committee's concluding observations, the State has had difficulty appointing enough public defenders. According to sources in the Supreme Court of Justice, only 33 public defenders (four in Pichincha) and 35 private defenders have been appointed by the judiciary at national level.

272. Despite these shortcomings, the judiciary's team of public defenders has succeeded in attending trial hearings in criminal tribunals for people who have no lawyer, or have one – private or public – that has given up their defence. An attendance of 80 per cent has enabled the criminal tribunals to resolve the cases before them.

273. Note that transitional provision 2 of the current Code of Criminal Procedure states that until such time as the Office of the Ombudsman is organized, where a public defender is unavailable or cannot be designated immediately, a professional practising lawyer is to be appointed as a public defender.

274. In 1998 the Supreme Court and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) signed a technical cooperation agreement to implement the project "**Phase two of the strengthening of public defence in Ecuador**". To implement it, the Supreme Court of Justice and ILANUD, with the support of the National Social Rehabilitation Council, carried out a legal census of prison procedures, which served as a basis for phase two of the project. As part of the project, public defenders were trained, along with the legal community, on the subject of public criminal defence. The Public Prosecutor's Office also signed an agreement with the Office of the Ombudsman to guarantee the right to a defence by means of officials and lawyers of the latter office.

275. Executive Decree No. 3546 of 17 January 2003 established the Commission for the Application of Criminal Trial Reform. This Commission put forward the **bill on the system of public defenders** and submitted it to the Office of the President on 28 June 2004. The President sent this bill to the Congress, where it is now in its second reading. The act on public defenders is aimed at establishing an autonomous institution, absolutely independent of any other State body or function, with its own resources to maintain a roster of defenders, i.e. lawyers contracted by the State who, with the support of lawyers of civil society organizations, provide an effective service to persons, whether Ecuadorian nationals or foreigners, who do not have sufficient financial resources.

7. Juvenile offenders

276. The new Children's and Youth Code, approved on 17 December 2002 and in force since 2 July 2003, covers – in Title X – the administration of juvenile justice, setting up a special section for the administration of juvenile justice, punishing juvenile offenders with socio-educational measures, to be served in the most serious cases in a special juvenile detention centre.

277. The Code guarantees due process, stating that minors are to be assured inviolability of defence, the presence of both parties, objection, direct communication with the judge, the right to be heard and the other guarantees of due process. The child or adolescent is to make statements without oath, in the presence of its parents or guardian. If the minor has neither, the judge will appoint a special guardian who is to be a person trusted by the minor testifying; the minor's testimony is to be made in confidence and under conditions that respect the minor's privacy and physical and emotional integrity. The parties to the proceedings may be present at the testimony if the judge considers that it is not contrary to the higher interests of the child or adolescent.

278. The administration of justice specializing in minors is composed of children's and adolescents' courts (34 at national level). As an auxiliary body in each judicial district an integrated technical office for doctors, psychologists, social workers and professionals specializing in working with children and adolescents, in numbers decided in each case by the National Council of the Judiciary. It is for the juvenile court judges, each within their respective territorial jurisdictions, to try and resolve the cases related to juvenile offenders. In cantons where there is no juvenile court judge, these cases are to be tried by the criminal court judge. In July 2003, the Public Prosecutor's Office appointed juvenile prosecutors in each district.

279. When the Children's and Youth Code entered force, between July and December 2003, 969 criminal complaints were submitted against minors, 577 of which were initiated with a prior investigation and 304 culminated with a prosecution investigation. Of these, only 123 received official acquittal decisions or convictions. In 2005, 4 220 complaints were submitted against juvenile offenders at national level. Of these, 2 584 were investigated beforehand and 914 ended with a prosecution investigation, 316 with an acquittal decision and 481 convictions. In the juvenile courts, of the 481 convictions, only 134 received socio-educational sentences, in accordance with the new Code.[32]

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[32] Statistics Unit of the Public Prosecutor's Office, 2005, www.fiscalia.gov.ec.

8. The new Supreme Court of Justice

280. Between December 2004 and November 2005, for political reasons, Ecuador's judiciary faced the worst crisis in its history, as a majority of members of the then National Congress removed the magistrates of the Supreme Court from their posts. This was unconstitutional, and they were replaced by other magistrates who did not satisfy the constitutional requirements and on the basis of an election that was not legally valid.

281. During his mandate President Lucio Gutiérrez collaborated on the illegal dismissal of the magistrates, and this was one reason why he was removed from power in April 2005. After that, an election took place of the members of the Supreme Court, with monitoring by international organizations, principally the United Nations, through the Special Rapporteur on the independence of judges and lawyers, who visited Ecuador twice, in March and July 2005.

282. According to the Special Rapporteur[33], the procedure for electing the new magistrates of the Court was fully inclusive and transparent and set an example at regional and international levels, as it was done by means of an open public competition and based on merit. One of the requirements to become a magistrate was not to be a member of any political party and to have no background of corruption or criminal offences, to ensure total political independence in accordance with the Constitution of the Republic. During the procedure, citizens and public opinion had the opportunity to challenge the candidates, by submitting relevant evidence.

283. Thirty-one Supreme Court judges were elected under this transparent and inclusive procedure, monitored by the international community, and took office in late November 2005. Since the Supreme Court's activities were suspended for nearly a year, there was a growing number of cases to be resolved. However, between 30 November 2005, when the new Supreme Court of Justice took up its functions, and February 2007, its specialist courtrooms heard 13 356 cases, 7 567 of which were resolved and 5 789 are pending. Of the 7 567 cases resolved, 3 085 were sentenced in only six months of work[34], which amounted to a huge effort in record time.

284. Based on the Freedom of Information Act, the new Court set up a web portal informing the public at all times of the status of the cases it is handling and statistics on them, simply by entering the name and date of the case. The portal also offers a curriculum vitae of each of the Court judges, and the salary scale for its magistrates, the judges of the High Courts, the judges of first instance and judiciary staff.

N. Article 15

285. Article 24, paragraph 1 of the Constitution of the Republic states that "no-one may be tried for an act of commission or omission that at the time of commission was not defined as a criminal, administrative or other offence, nor shall any punishment not provided for by the Constitution or by law be applied. Neither shall any person be tried except in accordance with pre-existing legislation, with observance of the proper procedure in each case". Under Ecuador's domestic legislation, this law allows of no exception and may not be suspended during declared

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[33] See reports by Rapporteur Leandro Despouy: E/CN.4/2005/60/Add.4 and E/CN.4/2006/52/Add.2, on his two missions to Ecuador (March 2005 and July 2005, respectively).

[34] Data taken from the website of the Supreme Court of Justice, www.cortesuprema.gov.ec

states of emergency.286. Article 2 of the current Criminal Code states that: "no one may be prosecuted for an act that has not been specifically declared an offence under criminal law, or undergo a penalty that is not laid down in that law."

287. Article 2 of the Code of Criminal Procedure also states that no-one may be sentenced, except by a conviction, handed down after examining the facts at trial and finding the accused liable, substantiated in accordance with the principles of the Constitution. Moreover, no-one may tried except by legally competent judges, and no-one may be tried or sentenced more than once for the same act.

288. These norms are in accordance with the relevant rules of the Covenant. The information in the present article of the Covenant should be compared with the information provided under Articles 4, 9, 10 and 14 of these reports.

Ñ. Article 16

289. Ecuador's domestic legislation guarantees legal personality to all persons from birth. Article 23, paragraph 5 of the Constitution states that everyone has the right to freely develop his own personality, with no limitations other than those imposed by the legal order and the rights of others. Article 23, paragraph 24 enshrines the right to identity. According to Ecuadorian domestic legislation, under no circumstances is this right suspended in states of emergency.

290. Article 40 of the Constitution provides that "the State shall protect mothers, fathers and heads of household in the exercise of their obligations. It shall promote the joint responsibility of the father and mother and shall ensure compliance with the reciprocal duties and rights of parents and children. Children, without consideration as to filiation or adoption, shall have the same rights. When a birth is registered there shall be no requirement for a declaration of filiation, and there shall be no reference to filiation in the identity document".

291. Article 49 of the Constitution states that "children and adolescents shall enjoy the rights common to all human beings, in addition to those specific to their age. The State shall ensure their right to life, from conception; to physical and psychological integrity; to their identity, name and citizenship".

O. Article 17

292. Article 23, paragraph 8 of the Constitution guarantees the right to honour, to a good reputation and to personal and family privacy. The law is to protect the name, image and voice of the individual. Article 23, paragraph 9 states that any person who is harmed by unproven or incorrect statements or whose honour is impugned by unpaid information or publications in the press or other mass media, shall be entitled to insist on free, immediate and proportional rectification by the latter, in the same space or at the same time as the information or publication being rectified.

293. Article 23, paragraph 12 establishes the inviolability of the home. No one may enter it or carry out inspections or searches without the authorization of the person living in it or by court order, in the cases and in the form laid down by the law. Paragraph 13 of the same article guarantees the inviolability and secrecy of correspondence. It states that correspondence may

only be seized, opened and examined in the cases provided for by law. Secrecy must be observed with regard to matters unrelated to the matter that justified examination of the correspondence. The same principle must be observed with regard to telegraphic, cable, telephonic, electronic and other similar communications. Documents obtained through the violation of this guarantee have no validity in court and those responsible will be punished in accordance with the law.

294. Title VII (articles 489 to 502) of the Penal Code deals with offences against honour and stipulates, in the Single Chapter with regard to defamation, classed as calumnious or non-calumnious, and lays down penalties which were increased with the reforms introduced in 2002. Chapter IV, on offences against the inviolability of the home, of Title II, Volume Two of the Ecuadorian Criminal Code punishes anyone violating these rights guaranteed by the Constitution.

295. Chapter IV, article 10 of the Regulation on the services of the National Postal Service states that: "The secrecy of correspondence relates not only to its contents but also an absolute prohibition on postal staff divulging any information whatsoever regarding the existence, address, number or other external aspect of the deliveries they handle. Officials may not disclose information or data relating to postal operations of any kind for which they are responsible, unless expressly authorized to do so by the Director-General". Article 11 of the same regulation states that "the inviolability of correspondence is breached by: its arbitrary or unlawful delaying, wilful misdirection, opening, removal, destruction, withholding or concealment and, in general, any breach of trust in its custody".

P. Article 18

296. Article 23, paragraph 11 of the Constitution establishes freedom of thought, conscience and religion: "This freedom may be expressed both individually and collectively, in public or in private. Persons may freely practise the religion they profess, subject only to such restrictions as the law may prescribe to protect security, public morals or the fundamental rights of other persons". This right may not be suspended in states of emergency. Chapter II, Title II of Volume Two of the Ecuadorian Criminal Code, on offences against freedom of conscience and thought (article 173 to 179) lays down penalties for anyone hindering the free exercise of those rights.

297. The State guarantees religious and secular education in the broad sense and with no restriction. The second paragraph of Article 67 of the Constitution states that "The State shall guarantee freedom of education and academic freedom; it shall reject all forms of discrimination; it shall recognize parents' right to choose an education for their children that is in accordance with their principles and beliefs."

298. Ecuador's domestic legislation does not require religious groups to have a licence or to be registered to practise their religion or belief, individually or collectively, in public or in private, unless their wish to contract civil obligations. In order to do so, religious organizations may register to obtain legal personality. Registration is also required when signing contracts.

299. To that end, the **Freedom of Worship Act**, enacted by means of Supreme Decree No. 212, published in Official Gazette No. 547 of 23 July 1937, empowers dioceses and other religious organizations of any persuasion that establish themselves in the country, to exercise rights and contract civil obligations. In order to exercise such rights, they must submit for the approval of

the Ministry of the Interior, Religion, Police and Municipalities their articles of association, describing their organization and functions, the administration of their property, their legal representative, and details of his or her election, representation and duties.

300. After approving their articles of association, the Ministry of the Interior has them published in the Official Gazette and enters them in the Property Register of the canton or cantons in which the religious organizations are to operate. Where the articles of association are amended, or there is a change of executive or legal representative, the Ministry must be informed so that it can analyse and approve the new articles of association or arrange for the registration of the new leadership. Registering the representatives and property of religious organizations affords them greater legitimacy.

301. According to Article 6 of the Freedom of Worship Act, catholic institutions, after registering as laid down in article 1, may exercise civil rights of control over their property, once they make the declaration allowed by Supreme Decree 121 of 18 December 1935.

302. On 24 July 1937, Ecuador and the Holy See signed a *Modus Vivendi* agreement, whereby the Government of Ecuador guaranteed the Roman Catholic Church in Ecuador the freedom to carry out activities appropriate to its field (article 1); and the freedom to teach, granting it the right to establish educational institutions; for its part, the Church guarantees that Roman Catholic establishments will submit to the laws and regulations of the State. Article 5 of that agreement states that "the dioceses and other Roman Catholic organizations and institutions in Ecuador shall have the status of legal persons, provided that they comply with the provisions of the Freedom of Worship Act".

303. The Ministry of the Interior, with the sole aim of having clear and adequate regulations enabling it to have better control over the religious organizations legalized in the country, under Ministerial Agreement No. 663-A of 28 January 1998, issued a directive for the granting of legal personality to religious organizations of any persuasion, consisting of seven articles, published in Official Gazette No. 263 of 25 February 1998; the text sets out the requirements to be satisfied by those concerned (article 2), as follows:

a) Application to the Minister or the Interior and Police, signed by a practising professional lawyer;

b) Articles of association, with the provisional executive of the body;

c) Three records of three sessions held on different days, in which the approval of the articles of association was discussed.

d) Draft articles of association of the religious organization;

e) List of members of the organization, with the identity card numbers of the members. Article 3 provides that an organization must have at least 15 members to be legally constituted;

f) Certificate to the effect that the members are resident in the place where the organization is based, issued by the police headquarters of the canton concerned.

304. Before granting legal personality, the Ministry of the Interior sends an official to inspect the place where the religious organization operates, to verify "that the church and meeting place exist, the number of members and the religion they profess". Where the official has observations, they are to be set down in a report (article 5 of the directive).

305. Where religious organizations wishing to acquire legal personality comply with the requirements, the Ministry of the Interior issues a Ministerial Agreement, approving and entering the organization in the Property Register of the canton where it has elected civil domicile (article 6 of the directive).

306. Article 7 of the directive states that where religious organizations do not comply with the provisions of article 4 of the Freedom of Worship Act, i.e. they do not inform the Ministry of the Interior of amendments to the articles of association or changes to the executive, they are to be punished by suspension for six months to one year.

307. In view of the need to regulate the Freedom of Worship Act, enacted in 1937, the Ministry of the Interior issued regulations under the Freedom of Worship Act, by means of Executive Decree No. 1682 of 11 January 2000, published in Official Gazette No. 365 of 20 January 2000, consisting of 33 articles. The most significant of these are:

1. Articles 1 to 12.- Publication and registration of the articles of association

308. Before entry and registration, the Ministry of the Interior checks that religious organizations are genuine religious bodies, that they have sufficient moral guarantees, that the legal representatives are of Ecuadorian nationality, domiciled in Ecuador and that the text of the articles of association do not endanger the security of the State, do not violate the rights of other persons or bodies and do not contravene any relevant legal and regulatory measures. They also have to present a certificate from the supreme authority of the church to which they belong. The Ministry of the Interior is fully entitled to reject the application should the analysis and review of the documents submitted indicate that the organization's ends are not religious.

2. Articles 13 to 26.- Rights and obligations

309. Article 13 recognizes and guarantees the activities of worship, dissemination of doctrine, education, culture, sport, welfare services, and charitable or similar works, while article 14 also recognizes their entitlement to rights and obligations, and requires their actions as legal persons to be carried out via their legal representatives.

310. Ministers of the catholic churches are considered to be those having the functions of the priesthood; and those of other churches elected in accordance with the articles of association (article 15). To be identified as such, the relevant carnets are to be submitted, and anyone falsely claiming that rank is to be punished in accordance with Chapters II and V of Title X of Volume Two of the Criminal Code (article 16).

311. These bodies may not operate for profit, and any financial proceeds of their activities are to be invested in their institutions (articles 17 and 18). They may reward the work of their members, but if wages, salary, fees or other rewards exceed the levels customary in the country, they will be considered to be in breach of their not-for-profit status (article 19). Nevertheless,

religious organizations that hire the services of employees, staff or workers are to abide by the provisions of the Labour Code and the obligations of the Ecuadorian Social Security Institute, but are not obliged to share profits with them (article 20).

312. Depending on the objectives and nature of the religious bodies that are granted legal personality, they are constituted as social, charitable or educational legal persons, thereby qualifying for tax exemptions (article 22) and being exempted from presenting accounts or balance sheets of their financial transactions to the State authorities (article 24).

3. Restrictions

313. Articles 25 and 26 of the regulations forbid religious bodies from sponsoring or joining political parties or movements, backing candidates or taking part in electoral meetings or events; making religious propaganda by unlawful means; insulting other religious bodies or their spokespersons or members; threatening persons, institutions or groups; carrying out acts of violence; offering material benefits to anyone renouncing their professed religion to adopt another; using their authority to oblige someone to change religion; hindering the free practice of the religion of others or committing the infringements set out in the Criminal Code, relating to religious values and freedom of religion.

4. Articles 27 to 31.- Cancellation and other measures

314. The Ministry of the Interior hears and investigates complaints against religious organizations. If founded, measures are adopted to maintain the established order (article 28). In the event of serious breaches of the relevant laws, it will order the cancellation of the registration as a religious organization and its property will be passed to another similar organization (article 29). Where religious organizations voluntarily decide to terminate their legal status, they are fully entitled to distribute their property to another religious or charitable body; if they fail to do so within 60 days, the Ministry of the Interior hands them over to another charitable institution (article 30).

315. Up to 2004, the Ministry of the Interior had approved the articles of association of 1 531 religious organizations, classed as assemblies, associations, boards, brotherhoods, centres, churches, communities, congregations, consortia, corporations, diocesan chapters, episcopal conferences, foundations, fraternities, governing councils, ministries, monasteries and missions, new apostolic churches and indigenous nations, organizations and orders, pastoral congregations, societies and temples, word of life.[35]

316. The Ecuadorian State thereby legally recognizes the existence of creeds and religions other than the Roman Catholic religion, which is still the dominant faith, such as the Protestant, Orthodox and Muslim religions, and other creeds covered by those religions.

317. Regarding freedom of conscience, article 188 of the Constitution of the Republic provides that military service is compulsory. Citizens who are conscientious objectors for moral, religious or philosophical reasons are assigned to civilian community service as determined by law. In

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[35] Data from the Legal Advice Department of the Ministry of the Interior, 2004.

other words, the State allows citizens to object on grounds of conscience to being drafted into military service.

318. Article 108 of the **Military Service Act** states that: "If there are sufficient grounds for the objection, it may be accepted by the Director of Mobilization of the Armed Forces." Citizens may lodge their objection, using special forms, at the Recruitment and Reserve Centres. Applications are considered by a committee that advises the Director of Mobilization. The committee is composed of clerics, psychologists and military personnel. In practice, conscious objection on religious grounds is recognized only on submission of documents signed by a bishop or religious authority.

319. According to the Constitution and the law, citizens granted the condition of conscientious objectors must carry out their military service in the development units of the armed forces, which build roads and bridges or take part in emergencies, disasters, civil defence, etc. They are subject to the military regime and receive the same training as other conscripts, except regarding the use of weapons. No statistics are available on the number of conscientious objectors to military service.

Q. Article 19

320. Article 23, paragraph 9 of the Constitution guarantees the right to freedom of opinion and to the expression of views through any of the mass media, without prejudice to the duties and obligations laid down by law.

321. The legal restrictions on freedom of expression are covered by current domestic legislation, which is in line with the provisions of the Covenant. Thus it is prohibited to disseminate information that by any medium or means promotes violence, racism, sexism, religious or political intolerance or affects human dignity. Article 97 of the Constitution states that citizens have the duty to act honourably and to tell the truth (paragraphs 5 and 8 respectively). Any person who is harmed by unproven or incorrect statements or whose honour is impugned by unpaid information or publications in the press or other mass media, is entitled to insist on free, immediate and proportional rectification by the latter, in the same space or at the same time as the information or publication being rectified.

322. On Ecuadorian territory, freedom of expression is a constitutional guarantee that is exercised freely, fully and without any impediment, through the various mass media, such as the press, radio, television and the internet, which report all events occurring in the political, economic, social, cultural and other fields, along with national and international news. Public opinion, through the media, is a legitimate means of pressure where State authorities or individuals break the law, through acts of corruption, abuse of authority or in particular human rights violations.

323. Professional journalists in Ecuador enjoy the necessary openness to obtain information from government, non-governmental and private organizations. The right to free exercise of journalism is guaranteed to foreigners visiting or residing in Ecuador.

324. Article 81 of the Constitution provides that "the State shall guarantee the right to access sources of information; to seek, receive, discover and disseminate objective, truthful, pluralist and appropriate information without prior censorship, on events of general interest, that upholds the values of the community, especially by journalists and media commentators. It shall also

guarantee the conscience clause and the right of professional secrecy to journalists and media commentators, or anyone stating formal opinions on behalf of the media".

325. The same article also states that information kept in public files is not confidential, except for documents where confidentially is required for reasons of national defence or on other grounds expressly laid down by law. The mass media must take part in educational processes, cultural promotion and the preservation of ethical values. The scope and limits of their participation are to be laid down by law.

326. Article 12 of the 1975 **Professional Journalism Act** provides that "a professional journalist is someone who:

a) has obtained a relevant academic qualification from a university or higher-education institution in the Republic;

b) has obtained that or an equivalent qualification in a foreign university or college of higher education, and has legally revalidated it in Ecuador, or

c) has obtained a professional certificate from the Ministry of Education after carrying out the profession before this law came into effect, and in accordance with its provisions".

327. Article 2 of the Act sets up the National Federation of Journalists, as a legal entity under private law, with a seat rotating in accordance with the relevant regulations. The Federation is to be governed by the Act, its articles of association and bylaws and by the Code of Professional Ethics. Article 3 of the Act establishes the bodies of the Federation: a) the National Assembly; b) the National Executive Committee; c) the Provincial Boards; and, d) Ethics Tribunals. The National Assembly is responsible for laying down the articles of association and bylaws of the Federation and any reforms thereof, while the National Executive Committee is responsible for the Code of Professional Ethics.

328. Ecuadorian law also guarantees the right to set up mass media and to have access, under equal conditions, to radio and television frequencies (article 23, paragraph 10) with the obligation to observe the rights referred to in article 50, paragraph 7 which states that "the protection of minors from the influence of harmful programmes or messages broadcast by any medium, or which promote violence, racial or gender discrimination or the adoption of improper values". This reduces potential discrimination owing to economic or political positions in having access to this right, and any other kind of discrimination that may arise with the broadcasting of information by the media that is contrary to human rights.

329. Under the above norm, in recent years in Ecuador there has been an increase in radio and television frequencies, and printed press media have been set up. With progress in computing there is easy access to the internet, which can be used to disseminate local and international information quickly and flexibly.

330. Article 9 of the **Special Telecommunications Act** provides that "the State shall regulate, monitor and contract telecommunications services in the country." Article 13 of that Act states that the State has sole competence for fully exploiting natural resources, such as the radio

frequency spectrum, and it is to administer, regulate and control the use of the radio frequency spectrum in telecommunications systems throughout Ecuadorian territory in the national interest.

331. In order to comply with these norms, Article 87 of the regulations implementing the Special Telecommunications Act governs telecommunications licences and Article 88 lays down the requirements for obtaining such licences and the grounds for revoking them.

332. Up to July 2004, Ecuador had 27 printed press media, of national, regional and local circulation, and 26 magazines of national and local circulation. The Ecuadorian Association of Newspaper Publishers (AEDEP) has been operating since 1985 which is the umbrella association for the print media. Up to this year, 1079 radio stations and 423 television stations were in operation. As for the printed press, radio and television associations have been set up, representing almost all the officially recognized media.

333. In April 2004, the National Congress approved the Freedom of Information Act, which was replaced by the new **Freedom of Information Act**, published in Official Gazette No. 337 of May 2006, which requires all State institutions to give the public clear and transparent information on their activities and the results of their management, and contains rules enabling citizens to have free access to the information of government institutions, to guarantee the transparency of the public administration, except for information relating to national security. To comply with this legislation, almost all State institutions have set up websites to allow public access to the information.

R. Article 20

334. Article 4, paragraphs 1 to 5 of the Constitution states that Ecuador, in its relations with the international community: proclaims peace and cooperation as the basis for international coexistence and the juridical equality of States; b) condemns the use or threat of force as a means of settling conflicts, and repudiates the spoils of war as a source of rights; c) declares international law to be the guiding norm for relations between States and promotes the settlement of disputes by legal and peaceful means; favours the development of the international community, and the stability and strengthening of its bodies; e) advocates integration, especially in the Andes and Latin America.

335. An event of fundamental importance took place in 1995, when the peace treaty was signed with Peru, the neighbouring country to the south, and a permanent frontier was agreed for the southern border, so concluding a long period of aggravation and wars that both parties kept up for nearly two centuries. Both States have now signed a number of bilateral cooperation agreements for the development of their populations, the most prominent of which is the **Two-Nation Southern Border Development Plan**, which has enabled roads and local community programmes to be created and improved. The two countries also worked together to demine the border zone, by means of specific programmes supported by the International Community.

336. As mentioned in the section on Article 2 of this report, constitutional norms also prohibit racial or religious discrimination. Volume Two, Title II of the current **Criminal Code**, "**Crimes against the Constitutional Guarantees and Racial Equality**", in the reform published in Official Gazette 769 of 8 February 1979, introduced five articles punishing racial discrimination.

337. The first unnumbered article provides that: "The following shall be punishable by imprisonment of six months to two years: 1. anyone disseminating by any means ideas based on racial superiority or hatred; 2. anyone inciting racial discrimination in any way; 3. anyone committing or inciting others to commit acts of violence against any race, person or groups of persons of any colour or ethnic origin; 4. anyone funding, aiding or abetting any kind of racist activity. If the crimes described in this article are ordered by public officials or employees, they shall be punishable by one to five years' imprisonment."
338. As mentioned in paragraph 300, article 173 of Chapter II, Title II, Volume Two of the Ecuadorian Criminal Code, on **"Crimes against freedom of conscience and thought**", provides that "anyone using violence or threats to prevent one or more individuals from practising any religion permitted or tolerated in the Republic, shall be punishable by six months' to two years' imprisonment".

S. Article 21

339. Article 23, paragraph 19 of the Constitution guarantees the right of association and of free assembly for peaceful purposes. Moreover, there are no provisions in domestic legislation expressly restricting that right.

340. In recent years in Ecuador a culture of debate and dialogue has arisen that has enabled all social sectors to organize meetings, forums, networks and workshops with the aim of claiming their constitutional and legal rights. This right is therefore fully guaranteed within Ecuadorian territory.

341. In practice, several consultation processes for the adoption of State programmes took place through meetings, dialogues and debates of the sectors involved, such as Ecuador's National Human Rights Plan, adopted in 1998, in which civil society and social movements from all provinces in the country took an active part for several years. In several debates, legitimate claims came to light of social sectors affected in the full exercise of their rights.

342. The same procedure was followed for the adoption in 2003 of the Operational Plans for Human Rights relating to sexual minorities, prisoners, consumers and labour; migrants, foreigners, refugees and stateless persons; education, older people, Afro-Ecuadorian and young people, and other Operational Plan projects that have yet to be approved, but which featured the active participation of various social sectors, such as the topics of disabilities, indigenous peoples, gender, children and adolescents, police and the armed forces, justice and others.

343. Other State programmes that were the result of exercising the right to peaceful assembly and consultation of various social sectors were the Ten Year Plan for Children and Adolescents, adopted in 2004, the 1996-2000 Equal Opportunities Plan and its new 2005-2009 phase and the Plan against trafficking in persons and sexual and labour exploitation, adopted in 2006.

344. Additionally, at national level from 1999 to 2004, the Police Commissariats, depending on the Ministry of the Interior and Police, approved an average of 1050 applications per year for peaceful public demonstrations, throughout the country.

T. Article 22

345. Constitutional norms guarantee the right to freedom of association and to form trade unions. Article 35, paragraph 9 of the Constitution establishes the right of workers and employees to organize and the right of such organizations to operate freely without prior authorization and in accordance with the law. For all matters concerning labour relations within public sector bodies, the labour sector shall be represented by a single organization. Paragraph 10 of that article indicates the right of workers to strike in their respective undertakings, and the right of employers to lock workers out, in accordance with the law.

346. The State guarantees that right through domestic rules, such as the Regulation of non-profit legal persons, the Labour Code, the Civil Code and the Commercial Code, among others.

347. Chapter VIII, Title II of Volume Two of the Criminal Code punishes "offences against the right to work, and freedom of association and petition".

348. Regarding the right to form trade unions, according to the Labour Code, employees may opt to organize in labour unions, either as an independent unit among work colleagues or as members of a group representing the whole group of workers. The name "association" is generally used to denote any organization of private-sector employees, or any union representing a large number of workers in the industry.

349. Trade unions and workers' organizations have considerable power in negotiating collective agreements for the benefit of their members, especially regarding working conditions, wage increases and social benefits.

350. To form a union, it must comprise at least thirty workers in a firm and must elect members to represent it vis-à-vis the company management and the Government. Where a union includes workers from different firms in the same sector, it must have at least 30 members of the total in that sector.

351. Under Ecuadorian law, workers not belonging to any organization or union are entitled in their individual contracts to enjoy the same benefits and wage increases negotiated for the contracts of union members. Even if they are not members, these non-union workers have to pay the union contribution, which may not exceed 1.5 per cent of the monthly wage.

352. Full rights are guaranteed for all foreign workers, but in practice this is more favourable to foreign citizens who have regularized their migrant status.

353. Regarding the right of association in general, under Ecuadorian law everyone has the right to associate with others to promote, exercise and protect their legitimate interests of a political, economic, religious, social, cultural, professional, trade union or any other kind.

354. Freedom of association is established in article 147 of the Labour Code. Workers and employers, without distinction and with no need for prior authorization, are entitled at their discretion to form professional associations or trade unions, and to join or leave such bodies, in accordance with the law and articles of the associations concerned.

355. Professional associations or trade unions are entitled to form federations, confederations or any other trade union groupings, and to join or leave such groupings or international organizations of workers or employers.. Any worker aged over fourteen may belong to a professional association or trade union.

356. Workers' organizations may not be suspended or dissolved except by legal proceedings. Workers' associations of all kinds enjoy State protection provided that they pursue one of the following ends:

a) vocational training;

b) culture and education of a general nature or applied to the relevant working sector;

c) mutual support through the formation of cooperatives or savings banks;

d) such others as improve the economic or social lot of workers and defend the interests of their category.

357. Foreigners are entirely free to form associations and elect their own leaders to represent them vis-à-vis government authorities and explain their needs and demand respect of their rights.

358. In Ecuador there are four influential labour organizations that represent or include many other smaller trade unions: the United Workers' Front (FUT), the Ecuadorian Confederation of Trade Organizations (CEDOC), the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) and the Confederation of Ecuadorian Workers (CTE).

U. Article 23

359. Article 37 of the Constitution provides that: "The State shall recognize and protect the family as the fundamental unit of society and shall guarantee conditions that will fully promote attainment of its purposes. The family shall be constituted on the basis of legal or de facto ties and shall have as its underpinning the equality of rights and opportunities of its members. The State shall protect marriage, motherhood and family assets. It shall also support women heads of household. Marriage shall be based on the free consent of the partners and on equality of rights, obligations and legal capacity of the spouses".

360. On 18 August 1989, Law 043 approved 81 reforms of the Civil Code, relating to the legal capacity of the woman within marriage, the administration of the couple's affairs, responsible fatherhood, mutual assistance of the spouses, marriage contracts, the rights and obligations of the spouses, parental authority and termination the marriage, thereby eliminating all discrimination in civil and family matters.

361. Under these reforms, both women and men may petition for divorce or the dissolution of their joint property. The couple's affairs may be administered by either spouse, although the law presumes that the husband normally administers their property unless there is an explicit declaration to the contrary. The courts do not make any distinction between the value of evidence submitted by a woman; the wife may also act as executor or administrator of the estate.

362. Article 38 of the Constitution of the Republic establishes the institution of the **"common-law marriage"**, adding that: "The stable and monogamous union of a man and a woman, free of matrimonial ties to another person, who constitute a de facto household for the period and under the conditions and circumstances indicated by law shall generate the same rights and obligations as families constituted through marriage, including with regard to legal presumptions of paternity and joint property". The above-mentioned reforms of the Civil Code had already recognized common-law marriages before the new Constitution entered force.

363. According to articles 6, 7, 8, 9 and 10 of the Constitution of the Republic, there is to be no discrimination on grounds of gender regarding the right to keep Ecuadorian nationality or acquiring a different nationality. De facto, the current Constitution repealed article 19 of the Naturalization Act which provided that if an Ecuadorian man naturalized himself in another country and thereby acquired another, his wife and minor children also lost it, retaining their right to recover their original nationality at the end of the marriage or on reaching majority respectively.

364. Articles 56 and 57 of the Civil Code define the domicile and nationality of the spouses. The Naturalization Act recognizes the equality of men and women when applying for citizenship. Now, following the 1989 reforms of the Civil Code, which abolished the requirement for the wife to follow the husband's domicile, the spouses decide by mutual agreement to settle in the place of their choice, including for marriages between Ecuadorians and foreigners.

365. Section Eight of the current Constitution, "Education", lays down various obligations for the State and the involvement of parents in education. The main reforms relate to the promotion of gender equality. The State guarantees equal opportunities in access to higher education and the involvement of the parents in the school career. At all levels of education, teaching about the rights and duties of Ecuadorian citizens is fostered. The State also promotes the joint responsibility of the father and mother and ensures compliance with the reciprocal duties and rights of parents and children.

366. For further information on the application of the present article, please see the information provided under Articles 3, 24, 26 and of these reports.

V. Article 24

367. The State party promotes the comprehensive development of children and adolescents as subjects of law. Under article 50 of the current Constitution, the State must adopt the necessary measures to ensure the well-being of children and adolescents in various environments. The Constitution also guarantees the protection of children from harmful influence of mass media broadcasting or promoting violence, racial or gender discrimination or the adoption of improper values (article 23, paragraph 3, article 40, 41, 49 and 50).

368. Over the reporting period, Ecuador ratified the following international instruments relating to children and adolescents: in 2001, the Conventions of the International Labour Organization (ILO) concerning minimum age for admission to employment (No. 138) and concerning the Elimination of the Worst Forms of Child Labour (No. 182); in July 2003, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their

Families; and in February and July 2004, respectively, the Optional Protocols to the Convention on the Rights of the Child, on the sale of children, child prostitution and the use of children in pornography, and on the involvement of children in armed conflict.

W. Article 24

1. Article 24, paragraph 1

The new Children's and Youth Code

369. The Children's and Youth Code, published in Official Gazette No. 737 of 3 January 2003, creates a broad new margin for the protection of children and adolescents in all areas of life, incorporating the norms laid down in the Convention on the Rights of the Child. The Code governs the enjoyment and exercise of the rights, duties and responsibilities of children and adolescents. To monitor compliance with the law, in accordance with article 194 of the Code, the **National Children's and Youth Council** was set up, which began operating in 2004.

370. The Code explicitly defines a child as a person who has not attained 12 years of age. An adolescent is an individual of either sex between 12 and 18 years of age (article 4).

371. A fundamental principle of the Constitution and the Code is the "higher interest of the child" aimed at satisfying the effective exercise of all the rights of children and adolescents (article 11). The law requires the State to take measures as required for effective exercise of rights. When devising and implementing public policy, such as the provision of resources, it must give absolute priority to children and adolescents (article 12).

372. Among the most important rights enshrined in the new Code are the right to life from conception, to dignity, the right to health, rights relating to development and education, rights to protection against sexual exploitation and ill-treatment (articles 52 and 67) among others. The law lays down the corresponding responsibilities of the State, parents and other persons caring for children and adolescents (articles 28 to 32 and 79).

373. As stated in paragraph 65 of the present reports, the crimes of child pornography, trafficking in persons, those relating to the removal of and unlawful trafficking in organs and sexual exploitation, were incorporated with the latest reforms of the Criminal Code of June 2005. The Criminal Code Reform Act, published in Supplement 1 of Official Gazette No. 427 of 29 December 2006, also increased the penalties for unlawful trafficking in migrants to long-term imprisonment of four to eight years and a fine of up to forty basic wages, also punishing with the same penalties those responsible for the care of minors, such as parents, family members and others aiding or abetting the commission of this crime against minor children aged under 18.

374. The Children's and Youth Code also lays down the principles of equality and non-discrimination on grounds of birth, nationality, age, gender, ethnic background, colour, social origin, language, religion, filiation, political opinion, financial situation, sexual orientation, state of health, disability or cultural diversity, or any other condition of the person or his or her parents (article 6) and ethnic and cultural diversity, guaranteeing the latter the right of children and adolescents of indigenous and Afro-Ecuadorian nationalities to develop in accordance with their culture in a framework of multiculturalism (article 7).

2. Sexual and reproductive health of adolescents

375. According to the 2001 census, 59 per cent of the population is aged under 24. The 10-19 age group accounts for 22.3 per cent of the national population (2 200 000 adolescents), almost 57 per cent of whom live in urban areas. Females represent 50.3 per cent of the total adolescent population.

376. As the following table shows, in 2003, 16 per cent of all pregnant women in the country were adolescents aged between 12 and 19, or 5.5 per cent of the total adolescent female population. Data from the Survey of Population and Maternal and Child Health, ENDEMAIN 2004, show that teenage pregnancy is a more serious issue in rural areas and occurs more often among less well educated adolescents: 32.3 per cent of teenage girls with no education and 16.7 per cent with unfinished primary education were already mothers.

TEENAGE PREGNANCIES

Adolescents aged 12 to 19			
	Per cent	**Pregnant adolescents**	**Total adolescents**
National total	5.5%	59 042	1 072 667
Urban area	4.9%	34 147	691.743
Rural area	6.5%	24 895	380 924
Adolescents aged 15 to 19			
	per cent	**Pregnant adolescents**	**Total adolescents**
National total	8.7%	55 830	639 728
Urban area	7.5%	31 668	423 145
Rural area	11.2%	24 162	216 584

PERCENTAGE OF PREGNANT ADOLESCENTS

Girls and women aged 12 to 49			
	per cent	**Pregnant girls and women aged 12-49**	**Total pregnant girls and women aged 12-49**
National total	16.0%	59 042	368 573
Urban area	15.6%	34 147	219 313
Rural area	16.7%	24 895	149 260
Girls and women aged 15 to 49			
	%	**Pregnant girls and women aged 15-19**	**Total pregnant girls and women aged 15-49**
National total	15.3%	55 830	365 361
Urban area	14.6%	31 668	216 834
Rural area	16.3%	24 162	148 527

377. The **Education for Love and Sexuality Act** was enacted in 1998, which made sexuality and reproduction compulsory and priority subjects across the school curriculum, as a basic element of the education of children and young adolescents.

378. In November 1999, through action by the institutions involved, the **Project to Promote the Exercise of Education Rights and Prevent Early Pregnancy** was devised and implemented. The project set up support networks in 11 cities, where pilot projects were carried out.

379. As stated in paragraphs 79 and 80 of these reports, in 2005 the **National Plan for Health and Sexual and Reproductive Rights** was approved, implemented by the Ministry of Health, and in December 2006 the new **Health Organization Act** entered force, offering comprehensive care in sexual and reproductive health to the adolescent population. It also provides for the formulation of education policies and programmes to promote sexual and reproductive health, prevent teenage pregnancy, prevent HIV/AIDS and other sexually transmitted diseases, encourage responsible parenthood and eliminate sexual exploitation.

380. The **Ecuador Adolescente** project has been receiving support since 2004 from the National Council for Women to help young adolescents with the issue of teenage pregnancy. One of the project's main achievements relates to the more prominent role of adolescents in society and the construction of juvenile agendas in the 12 cities where the project is taking place, fostering campaigns for publicizing and promoting sexual and reproductive rights, giving priority to eradicating sexual violence The programme has influenced health and educations services and the formulation of local adolescence and youth policies from a gender perspective.

3. Child labour

381. Article 50, paragraph 2 of the Constitution provides that the State is to adopt measures to afford special protection for children and adolescents at work and against economic exploitation in dangerous working conditions, that are damaging to their education and harmful to their general development. Chapter five of the Children's and Youth Code on "the right to protection against labour exploitation" states that children and adolescents have the right to protection from the State, society and the family against labour and economic exploitation and any form of slavery, servitude, forced labour or labour that is harmful for their health, physical, mental, spiritual, moral or social development, or that may jeopardize the exercise of their right to education.

382. The Code sets the minimum age for any kind of work, including domestic service, at fifteen. The working day may not exceed six hours for a maximum of five days a week and is to be organized so that it does not limit the effective exercise of the right to education. The Ministry of Labour keeps a register of working adolescents, which it submits periodically to the children's and youth councils of each canton, set up by the Code.

383. According to data from the Survey of Urban and Rural Employment and Unemployment (ENEMDUR), in Ecuador in 2001 there were 3 166 276 children aged 5 to 17. Of that figure, 789 070 were working, meaning that 24.9 per cent of the country's population under 18 was economically active. Of the above figure, 17 per cent worked only while 28 per cent was working and studying. Of working adolescents, 61 per cent were males and 39 per cent females.

384. More than half of working children aged under 18 were involved in farming (444 515 children, 207 921 of whom were aged between 6 and 11), retail trade (82 386), domestic service (28 208), building (25 505) and hotels and restaurants (24 628).

385. To address the Committee's concerns in paragraph 17 of its concluding observations, for the eradication of child labour in Ecuador, the State party would point out that after the **National Committee for the Gradual Eradication of Child Labour** was set up by Executive Decree No. 792, published in Official Gazette No. 189 of 7 November 1997, this organization has been strengthened and is still attached to the Ministry of Labour and Employment. It has now become a member of the committee of the National Children's and Youth Council.

386. The Committee has a Technical Secretariat attached to the Ministry of Labour and Human Resources, which is also responsible, together with the Children's Council and the National Institute for Children and the Family (INNFA), for drafting, implementing, monitoring and assessing the **National Plan for the Gradual Eradication of Child Labour**.

387. The Chambers of Production are also part of the Committee, as they have a twofold responsibility: firstly to help raise public awareness of the issue and secondly to work towards their members setting an example of proper compliance with the legal provisions protecting child and adolescent workers and respecting their legitimate rights. The trade union confederations are also involved in the Committee, as bodies committed to overseeing the rights of child and adolescent workers, representing them effectively and supervising their integrity in the working environment.

388. In 2003, the National Plan for the Gradual Eradication of Child Labour set up the **national child labour inspection system**, under the Ministry of Labour, which is subject to the rules of the Labour Code and related regulations, with the same authority and powers as the current Labour Inspection System. This inspection system led to a considerable reduction in child labour by under-15s in farming, such as banana plantations, flower export firms, etc. The Ministry of Labour, in coordination with the National Institute for Children and the Family (INNFA) and the National Juvenile Police Department (DINAPEN), is implementing programmes for monitoring child labour and awareness campaigns.

389. The Ministry of Labour has invested a major effort in promoting the Campaign for the Eradiation of Child Labour, as part of the National Plan for the Eradication of Child Labour. The campaign included a measure to create 35 new **Child Labour Inspectorates** in all provinces in the country.

390. Under the **Ten-Year Plan for Children and Adolescents**, adopted by the **Children's and Youth Council** in October 2004, a State policy is being considered of gradually eradicating harmful, dangerous or hazardous child labour and providing protection against labour exploitation.

391. In 2003, 4 000 adolescents were working in mines in the areas of Ponce Enríquez and Bella Rica in the Province of Azuay, Zaruma and Portovelo in the Province of El Oro and Nambija in the Province of Zamora Chinchipe.

392. In response to this situation, the Committee for the Eradication of Child Labour and the International Labour Organization, under its International Programme for the Elimination of Child Labour (IPEC), devised a **programme for the elimination of child labour in mining** aimed at helping to prevent and eliminate child labour in mining by improving the quality of life of child workers and their families, thereby holding out real opportunities for their future development.

393. Implementation of the programme was based on three fundamental approaches: direct intervention through local development activities, awareness-raising through national and local campaigns, and a system that monitors and gauges the extent of child labour in mining. The programme succeeded in eradicating all child labour in mining in those areas.

394. On 2 February 2006, the National Congress endorsed the **Labour Code Reform Act**, published in Official Gazette No. 250 of 13 April 2006, which expressly prohibits children and adolescents under the age of 15 from working and imposes severe penalties on companies that violate its provisions (article 134, amended version). The Act also prohibits adolescents over the age of 15 from dropping out of basic education in order to work (article 135, amended version). Under the Reform Act, adolescents over the age of 15 may work for a maximum of six hours a day or 30 hours a week (article 136, amended version). The Ministry of Labour is required to keep a cantonal register of adolescents working and submit the information to the Cantonal Councils for Children and Adolescents (article 147, amended version).

395. The Reform Act prohibits all forms of slavery or similar practices, work that is dangerous, harmful or unhealthy for minors under the age of 18, the sale and trafficking of children, forced labour, recruiting or offering children for prostitution and pornography and the use of children to produce or traffic drugs (article 138, amended version). It also grants adolescents over the age of 15 full legal powers, such as the power to conclude contracts without the authorization of their representative, the power to receive their wages directly and the power to make administrative or judicial complaints if their employment rights are violated (articles 35 and 616, amended versions).

4. Article 24, paragraphs 2 and 3

396. According to Article 7 of the Constitution of the Republic, "The following are Ecuadorian by birth: 1. a person born in Ecuador". Among other freedoms and civil rights, article 23, paragraph 24 of the Constitution guarantees Ecuadorians "the right to identity, in accordance with the law". On the subject of special rights and guarantees for vulnerable groups, Article 40 of the Constitution guarantees children the right to identity and identification, providing that "when a birth is registered, no statement has to be made with regard to the type of filiation, and no reference shall be made to the type of filiation in its identity document".

397. Article 33 of the Children's and Youth Code provides for the right to identity and the elements of identity, notably name, nationality and family relations, in accordance with the law, and the State is bound to preserve the identity of children and adolescents.

398. Article 35 of the Code concerns the right to identification, stating that "children are entitled to be registered immediately after birth, with their paternal and maternal surnames. The State shall guarantee the right to identity and identification by means of a civil registration service

with flexible, free and simple procedures for obtaining identity documents". Article 36 of the Code lays down the procedure for the Civil Registry to register children and adolescents born in territory of the Republic.

399. **The Civil Registration, Identification and Documentation Act**, published in Official Gazette No. 70 of 21 April 1976, governs the operation, powers and management of the **Department of Civil Registration, Identification and Documentation**, empowered to register and enter facts and acts relating to the civil status of persons resident in the territory of the Republic and Ecuadorians resident abroad. The Directorate-General has the specific task of organizing registrations, issuing citizens' identity cards and preparing the electoral registers.

400. Article 28 of the Act identifies the authorities and officials responsible for registering births taking place on Ecuadorian territory. Article 29 lays down as an essential minimum requirement for registering or entering a birth the live-birth statistical report authorized by the doctor, obstetrician or nurse who attended the birth. If no such professional was in attendance, the law allows the birth to reported on the basis of witness statements. This normally happens in rural areas where there is no medical care.

401. Article 30 of the Act states that the birth must be declared and registration applied for by one of the following persons, in priority order: a) the father; b) the mother; c) a grandparent; d) a sibling aged over 18; e) another relative aged over 18; f) a representative of welfare or police institutions; or persons recovering a foundling. Article 31 states that the following are responsible for notifying a birth in writing: the doctor, obstetrician, nurse or other person attending the birth; the head of the medical institution where it occurred and anyone recovering a foundling or abandoned child.

402. These laws clearly establish the right of all Ecuadorians born on national territory to register their birth with the competent authority, with no restrictions of any kind for that purpose. Therefore, regarding the Committee's concern expressed in paragraph 18 of its concluding observations, on parents' fear of deportation if they register their children, we should stress that the Department of Civil Registration has no powers to control migration; therefore, when a birth is registered, it may not take unlawful measures against foreigners.

403. Regarding the Committee's concern that the births of children born in Ecuador to undocumented refugees are frequently not registered due to the parents' fear of deportation, the State would add the following:

a) Since Ecuador is a party to the United Nations Convention relating to the Status of Refugees of 28 July 1951, it has complied unconditionally with the issue of identity documents to any refugee on its territory not having a valid travel document, as required by article 17 of the Convention. This right to obtain identity documents extends to the refugee's household where recognized as such by the State of Ecuador, namely his or her spouse, minor children and other relatives who are financially dependent on the refugee, as laid down by article 22 of the **Regulation for the Implementation in Ecuador of the Norms Contained in the 1951 Geneva Convention**, issued by Executive Decree No. 3301 of 6 May 1992;

b) Article 27 of that Regulation also provides that refugees on Ecuadorian territory enjoy the same rights that the Constitution and laws of the Republic recognize for foreigners in

general, in addition to those set out in the 1951 Convention. This provision implies that any refugee and his household have the right to identification and the issue of identity documents.

404. Therefore, in accordance with the legislation referred to above, legally recognized refugees are given an identity document that attests to their refugee status and enables them to enjoy all the rights recognized for all foreigners under the Constitution and the law. Accordingly, the State considers that if a child of a refugee is born on Ecuadorian territory, the refugee may register the birth in the Civil Registry without fear, since he or she is residing legally in Ecuador.

405. The Committee's statement that "children born in Ecuador to **undocumented refugees** are frequently not registered due to the parents' fear of deportation" could be interpreted to mean that the Committee is referring not to legally recognized refugees but to **undocumented** persons who are not staying in Ecuador legally. If so, it is important to stress that Ecuador's constitutional norms grant Ecuadorian nationality to any child born on its territory, regardless of the migration status of its parents; this is in line with the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. These norms are supplemented by article 29 of the above-mentioned Civil Registration Act under which the only requirement to register a birth is the doctor's live birth statistical report.

406. Moreover, the Aliens Act allows a foreign parent registering a child born on Ecuadorian territory to obtain an indefinite visa under article 9, paragraph 6, thereby legalizing his or her stay as an immigrant.[36]

407. According to information supplied by the National Department of Civil Registration, 18 271 births in Ecuador by foreign parents were registered in an electronic database between 2000 and 2006.[37]

408. In any case, the State is aware of the need to carry out campaigns to publicize the above-mentioned constitutional and legal measures so that undocumented persons who have not regularized their migration status in Ecuador are informed about the rights of children born in the territory and are encouraged to register them.

409. Under the **Programme for the Modernization of the National Civil Registration and Identification System**, which is being implemented by the National Council for Modernization and the National Department of Civil Registration, in April 2006 a cooperation agreement was signed between the National Council for Women (CONAMU), the National Childhood and Adolescence Council, the National Institute for Children and the Family, the National Directorate for Bilingual Intercultural Education (DINEIB), the Council for the Development of the Nationalities and Peoples of Ecuador (CODENPE), the United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees (UNHCR)

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[36] Article 9, paragraph 6 of the Aliens Act.

[37] Data supplied by e-mail from the Department of Civil Registration, 7 July 2006.

with a view to implementing the **National Plan on Identification, Civil Registration and Free Late Registration**, which was entitled "Together for identity".[38]

410. The objective of the first component is universal access to identity and the guarantee of this fundamental right for all Ecuadorians of all ages. To that end, mobile registration and identification brigades were deployed to areas of Ecuador in which inhabitants have not had access to these services. It is hoped that over 1.5 million unregistered Ecuadorians who do not have access to basic services such as health care and education because they do not have an identity card will use the mobile brigades. Approximately 600 000 of these people are children.

X. Article 25

411. Article 26 of the Constitution provides that Ecuadorian citizens have the right to elect and to be elected; to submit draft laws to the National Congress; to be consulted in cases provided for in the Constitution; to supervise acts by the public authorities; and to hold public office or employment, under the conditions laid down by law.

412. Article 27 of the Constitution adds that "suffrage is universal, equal, direct and secret, compulsory for those who can read and write and optional for illiterates and those aged over 65". "All Ecuadorians who have reached the age of 18 and who are in possession of their civic rights are entitled to vote". Paragraph 3 of that article states that "Ecuadorians domiciled abroad may take part in the election of the President and Vice-President of the Republic, at their place of civil or electoral registration". This last right was exercised by Ecuadorians abroad in the most recent elections held on 15 October and 21 November 2006.

413. Article 28 of the Constitution relates to the suspension of political rights for the following reasons: judicial interdiction, or a custodial sentence, excluding the cases of minor offences and other cases determined by law.

414. Article 102 of the Constitution states that "the State shall promote and guarantee equal participation by women and men as candidates for public office, in public-sector administration and decision-making institutions, in the administration of justice, control agencies and political parties.

415. The current **Elections Organization Act**, published in Official Gazette No. 117 of 11 July 2000, regulates the constitutional norms referred to above. It also guarantees the representation of minorities in multi-person elections, as a fundamental principle of the democratic system. Article 8 of that Act establishes equal participation by women and men as candidates in elections for public office and the active and passive legitimization of the law of suffrage, on equal conditions.

416. As stated in paragraph 84 of these reports, article 58 of the Elections Organization Act expressly provides that multi-person candidate lists must include at least 30 per cent women as main candidates and 30 per cent as alternates, both alternately and sequentially, increasing by 5 per cent at each election until such time as parity is achieved. Account is to be taken of cultural and ethnic participation.

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[38] Data from CONAM, www.conamu.gov.ec

417. Articles 2 and 3 of the current **Political Parties Act**, published in Official Gazette 196 of 1 November 2000, state that parties are political and ideological organizations composed of persons freely associating to take part in the life of the State, and are a fundamental element of the democratic system. They are obliged to express and guide the political will of the people and to promote active civic participation by citizens. They are to comply with manifestations of the sovereign will of the people, respect the non-deliberative role of the members of the armed forces and National Police on active duty, and may not form paramilitary organizations. Article 4 defines them as legal persons under private law. Article 6 prohibits political parties from subordinating their actions to foreign organizations or states.

418. Article 9 of the Act recognizes the right to found and participate in political parties. For a political party to be legally recognized it must advocate doctrinal principles by which it may be identified, submit a political action programme, have a nationwide organization and have the number of members specified by law, namely 1.5 per cent of persons entered at national level on the electoral register. The Act provides that the registration of political parties is subject to the approval of the Supreme Electoral Tribunal after it has examined the above requirements.

419. Article 7 of the Act guarantees the right of Ecuadorian citizens aged over 18 to freely join or leave a political party, with no discrimination on grounds of race, sex, religious belief, culture or social or financial circumstances, with the exception of the members of the armed forces and National Police on active service, members or ministers of any religious order and those convicted of defrauding the State, for a period equivalent to twice their sentence. It is prohibited to be a member of more than one party, on pain of loss of citizenship rights for one year.

420. Articles 29, 30 and 31 of the Act provide that parties are to be free to disseminate their ideology and programmes and to take measures for their organization and strengthening; they are to have free access to the mass media and the rates they have to pay for the manifestos and propaganda that they publish or disseminate may not exceed those laid down for ordinary commercial advertising; they may present or back candidates for election to public office; they are exempt from State, municipal or special taxes on immovable property they own or for purchasing or disposing of it; they are also exempt from tax on earnings on investments they make.

421. Citizens who are neither members of nor backed by political parties may also stand for election, subject to the requirements laid down in the Constitution and the Act (second indent of article 31).

422. In accordance with the Constitution, the State recognizes and guarantees that persons will not be discriminated against on grounds of political affiliation, and have the right not to divulge their political convictions. In this connection, article 33 of the Act prohibits any act that limits the involvement of citizens in the political parties. Public or private officials or workers may not suffer reprisals or segregation for being a party member, for holding managerial positions in it or publicizing its ideas. However, they may not take advantage of their positions or use working time for campaigning activities.

423. Articles 34, 35 and 36 of the Act state that if a party's registration is cancelled it ceases to exist and loses all its property and the special protection afforded by the Act, and it may not apply for recognition again. Cancellation may take place by:

a) a free and voluntary decision taken in accordance with its articles of association;

b) being taken over by or merging with another political party;

c) failing to win at least five per cent of the valid votes cast in two successive national multi-person elections.

d) not taking part in a multi-person electoral event in at least ten provinces, two of which must take place in the three most populous;

e) forming paramilitary organizations or failing to respect the non-deliberative role of the members of the armed forces and National Police on active duty. It is for the Supreme Electoral Tribunal to declare that a political party has been liquidated.

424. The law guarantees the right of political parties to organize public meetings, parades and demonstrations and free ideological, political and electoral propaganda, through the mass media or otherwise, provided that the honour of persons and public morals are respected. However, political campaigning in schools is prohibited.

425. In the last elections held on 15 October and 21 November 2006, apart from the President and Vice-President of the Republic, 5 members of the Andean parliament, 100 members of Parliament, 67 provincial ministers, 674 municipal councillors and the members of 10 parish councils were elected. Of 9 165 125 registered voters, 3 217 825 men and 3 399 417 women voted, not counting spoilt and blank votes, with abstentions of 29.89 per cent and 27.21 per cent respectively. In elections held outside the country, 67 785 men and 75 567 women took part, which shows that more women vote. Fifteen political parties registered and received votes for the various public offices.[39]

Y. Article 26

426. As we said in paragraph 22 of these reports, article 22, paragraph 3 of the Constitution establishes the right to equality before the law: "All persons shall be considered equal and shall enjoy the same rights, freedoms and opportunities, without discrimination on grounds of birth, age, sex, ethnic group, colour, social background, language, religion, political affiliation, financial circumstances, sexual orientation, health, disability or difference of any kind." By including a ban on discrimination on these grounds that were not explicitly mentioned in the previous Constitution, the scope is broadened of the protection of the human rights of vulnerable groups.

1. Non-discrimination on grounds of sexual orientation

[39] Data from the Supreme Electoral Tribunal, www.tse.gov.ec, 2006.

427. In accordance with the above constitutional principle, article 23, paragraph 5 of the Constitution recognizes the right to freely develop one's personality with no limitations other than those imposed by the law and the rights of others because, even when no specific reference is made to the gender aspect, the free development of the personality necessarily involves men, women and identities other than their apparent ones.

428. As the Committee was informed in the Fourth Periodic Report, Ecuador's Constitutional Court, by means of Resolution No. 106 published in Official Gazette No. 203 of 27 November 1997, suspended the effects of article 516 of the Criminal Code that repressed the practice of homosexuality, as it was discriminatory on grounds of sexual orientation and in breach of international human rights agreements, thereby decriminalizing this practice.

429. In this connection, the Constitution recognizes everyone's right to take free and responsible decisions about their sex lives (article 23, paragraph 5) and promotes a culture for health and life, with an emphasis on sexual and reproductive health (second indent of article 43). It also recognizes the existence of sexual violence, prohibits it and states that the victims of this kind of behaviour are to be cared for (article 47) and guarantees the right to privacy and the confidentiality of data relating to health and sex life (article 23, paragraph 21).

430. In line with these constitutional mandates, the Ministry of Labour and Employment of Ecuador (MTE) has taken steps to combat discrimination against persons living with HIV/AIDS. Ministerial Agreement No. 00398, issued on 13 July 2006, prohibits public and private companies and all State institutions from conducting mandatory HIV testing for job applicants or employees, and prohibits dismissal without notice on those grounds. This Agreement promotes prevention, provision of information and education in workplaces and advocates voluntary HIV testing with informed consent.

431. The State of Ecuador, through the Ministry of the Interior and the judiciary, prosecutes complaints submitted to the various judges on violations of the human rights of persons with diverse a sexual orientation and monitors the relevant legal proceedings until they are resolved. In the event of sexual violence, the relevant assistance papers are issued by the Commissariats and when the facts are classed as sex crimes, the relevant criminal procedures are initiated, through the Public Prosecutor's Office, in accordance with current norms.

432. Based on the provisions of the Constitution, under the National Human Rights Plan, in 2003 the **Operational Plan on Sexual Diversity, GLBT**, which covers gay, lesbian, bisexual and transgender individuals, was approved. The Operational Plan was devised by the groups directly involved, and State bodies and human rights organizations were consulted at national level. It is now fully operational.

433. The plan aims to foster Ecuadorian society's commitment, through specific measures and recommendations, to the equality of all persons before the law and non-discrimination on grounds of sexual orientation. It is implemented by means of strategies and methods such as: the development of diversity in society; the application of the Constitution; and the strengthening of equality and non-discrimination, focusing on financial and social equality, participation and representation, civil rights, communication and culture, and the right to health.

434. As a result of the implementation of the Operational Plan for Sexual Diversity, in 2005 a bill was presented to the National Congress against all types of discrimination, covering discrimination on grounds not only of sexual orientation, but also of race, ethnic origin and social background. Training and dissemination activities were also carried out on the rights of persons with diverse sexual orientations, for civil servants and civil society organizations.

2. Non-discrimination on grounds of gender

435. Regarding gender equality, the Committee's concern, expressed in paragraph 16 of its concluding observations, at "the continuation of traditional attitudes and obsolete laws" has been well covered with the information supplied under article 3, 23 and 24 of the present reports, showing the State party's substantial legislative progress in this area, with the enactment of the following laws: the 1989 reforms of the Civil Code (Law 043), the Violence against Women and the Family Act, the Elections Act, the Act on Sexuality and Love, the Free Maternity Care Act, the Employment Protection Act, the reforms of the Criminal Code of June 2005, the Health Organization Act, the 2006 Labour Code Reform Act and the Children's and Youth Code.

436. The State party's attention is drawn to the recommendation, also in paragraph 16 of the Committee's concluding observations, that the State party "abrogate those provisions of the Code of Criminal Procedure which prevent a prostitute from being considered as a suitable witness in trials" since neither the previous Code nor the present one contains such a provision; on the contrary, article 125 of the Code of Criminal Procedure clearly states that no person's testimony is to be rejected, except for those of professional persons bound to secrecy and family members of the accused up to the fourth degree of blood relationship and the second by marriage. There is also an exception for statements by family members where they expressly renounce the privilege on account of being victims of the crime.

437. In 1997 the State party set up the National Council for Women (CONAMU) by Executive Decree No. 764 of October 1997, as the lead agency responsible for developing and promoting public policies with a gender perspective. It has legal capacity, its own assets and managerial-financial regime and it reports directly to the Office of the President. The Council's operating model provides for the establishment of a board comprising representatives of the State and national women's organizations, and establishes a relationship of shared responsibility between State and civil society in defining broad policy lines for gender equality and promoting the rights of Ecuadorian women.

3. Implementing the Equal Opportunities Plan (PIO)

438. As stated in the fourth Periodic Report, in March 1996, the National Directorate for Women[40] presented the first edition of the equal opportunities plan, 1996-2000, enacted by Ministerial Agreement No. 0306 of the Ministry of Social Welfare.

439. In order to address the Committee's concern, expressed in paragraph 16 of its concluding observations, recommending that the State party "fully implement the Plan for Equal

[40] In 1997, the National Council for Women was founded; it is attached the President's Office and it administratively and financially independent.

Opportunity" [1996-2000], under the management of the National Council for Women and other institutions involved, the following results were achieved for gender equality.

a) Education

440. The Ministry of Education and Culture has established the Proequity Network, which brings together all its technical departments. Gender has been mainstreamed into the teaching curriculum, school textbooks, training models for teacher training institutes (IPEDS) and measures taken to prevent and punish sexual harassment in the education system. In addition, more public and municipal bodies are now implementing a mixed education policy, i.e. one that allows men and women to attend the same educational establishment.

441. The topic of gender is being introduced into higher education curricula. The State-run Central University of Ecuador has been a pioneer in the development of higher-education training programmes on the issue of gender. The University Gender Studies Programme (PUEG), designed as part of the Project for Alternative Education with a Gender Perspective, has been in existence since 1995. Significant efforts have been made to mainstream a gender perspective into the curricula of a number of faculties. For instance, in the Faculty of Medical Sciences, a gender perspective has been mainstreamed into nursing and obstetrics courses; a gender professorship has been created in the Psychology Faculty; and similar steps have been taken in the Faculties of Social Communication and Sociology. The Philosophy Faculty decided to mainstream a gender perspective into the 10 courses it offers.

442. Specialist gender courses have also been launched in other higher education establishments: the Higher Diploma in Gender and Public Policy (1998) and the Masters in Social Sciences, with a specialization in gender studies (1999-2000) of the Latin American Faculty of Social Sciences (FLACSO), run under the auspices of CONAMU. These experiences represent major progress in incorporating the analysis of gender to generate new and transforming knowledge and are in line with the mandates of both the Beijing Platform and the Equal Opportunities Plan.

443. Ministerial Agreement No. 910 of 28 May 2000 adopted a **National Plan for Education on Sexuality and Love (PLANESA)** and provided for its implementation at all levels of the education system, in Government and non-governmental organizations and in the media. In the same framework, Ministerial Agreement No. 3393 adopted the special regulations for procedures and mechanisms for awareness and handling of sexual offences in the education system. In late 2005 and the first quarter of 2006, an intense training programme on Ministerial Agreement 3393 has been carried out for officials of the Provincial Directorates of the Ministry of Education.

444. The National Council for Women has forged strategic partnerships with the local governments in Cotacachi and the Municipal District of Quito and with other provincial governments in order to implement the literacy and post-literacy programme for women, entitled "Yes I Can" ("Yo sí puedo"). That programme currently covers 68 cantons in 18 provinces, and has provided literacy training to 31 528 individuals, 21 249 of whom – the majority – were women.

b) Health

445. **The Free Maternity and Child Care Act** (LMGYAI)[41], which underwent a reform in 2005 and was codified in 2006, is a special measure intended to help lower the economic hurdles to health care for women and for children under five.

446. For the administration of the funds for which the Act provides, the most recent reforms, published in Official Gazette No. 136 of 31 October 2005, established the **Executive Unit for Free Maternity and Childcare**, an administratively and financially autonomous body attached to the Ministry of Public Health. The Unit manages the Health Solidarity Fund that finances free care at national level and transfers funds to 210 executive units of the Ministry and to 50 management committees for local health solidarity funds, at canton level.

447. This approach is used to provide Ministry of Public Health hospitals with medicines, inputs, materials, laboratory reagents, blood, blood products and milk substitute to provide free health care for women, whether in connection with motherhood or with sexual and reproductive health programmes, and for children under five. Users do not have to pay any costs for care.

448. As mentioned previously, a result of the reform, the Act requires health centres and hospitals to provide 55 services connected with sexual and reproductive health, including antenatal, delivery and post-partum care; family planning; screening for breast and uterine cancer; screening women for HIV/AIDS; care for victims of family violence; obstetric emergency care; treatment for sexually transmitted diseases and treatment for the most common childhood ailments, including those requiring hospitalization. Of the 2 733 608 individuals who benefited from the Act in 2005, 1 281 177 were women and 1 452 431 were children under five.[42]

449. In order to address the Committee's concerns set out in the above-mentioned paragraph 79, regarding access to appropriate health and education services for adolescents, in 1998 the National Plan on Health and Sexual and Reproductive Rights was established in collaboration with the Ministry of Public Health and other key health-sector players. Its aim is to guarantee the implementation of the National Policy contained in the Plan, in the context of human rights and overall health, in order to enable the men and women of Ecuador to flourish and have a better quality of life, including the ability to enjoy a fulfilling sex life and the freedom to decide whether, when and how often to have children.

450. The adoption of the **Act on the Prevention and Comprehensive Care of HIV/AIDS**[43], was an important step in eliminating discrimination on grounds of health. Through the National AIDS Programme, the Ministry of Public Health is carrying out a campaign for the prevention of vertical transmission of HIV and offers free HIV testing to pregnant women with funding from the unit established by the Free Maternity and Child Care Act. In addition, funding from the same source is being used to develop a pilot maternity programme in Guayaquil which provides free breast milk for the first six months to newborn children of mothers carrying the virus.

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[41] The Free Maternity and Child Care Act (LMGYAI) was issued on 9 September 1994.

[42] Official Ministry of Health data, December 2005.

[43] Published in Official Gazette N.. 58 of 14 April 2000.

c) Violence

451. The regulations implementing the Violence against Women and the Family Act (Law 103) were issued, along with an application manual for those administering justice, on 18 August 2004 and published in Official Gazette No. 411 of 1 September of that year.[44]

452. Similarly the manual of procedures for the application of the Act and its general regulations were approved by Ministerial Agreement No. 298 of the Ministry of the Interior and Police in 2005. The manual was prepared jointly by the Ministry's National Directorate for Gender (DINAGE) and a number of civil society organizations. The manual was circulated extensively by DINAGE and CONAMU. At the same time, training courses are being held for judges and women's and family commissioners, who are responsible for trying cases of physical, psychological or sexual violence, and for National Police officers.

453. In 2002, the Public Prosecutor's Office approved **forensic protocols for conducting medical examinations in cases involving physical and sexual violence**. In 2003, the Gender Committee was established in the Public Prosecutor's Office as part of the process of mainstreaming a gender perspective into the administration of justice in Ecuador. In 2006, the National Women Prosecutors' Network was formed.

454. Local governments have strengthened inter-institutional networks for the protection of victims of sexual violence in the country's most populous cities, and drawn up cantonal plans for the eradication of sexual exploitation in Lago Agrio and Manta.

455. As part of the Cantonal Plan for the Eradication of Violence in Guayaquil, and with technical assistance from the Centre for the Protection of Women (CEPAM), an NGO, a reporting procedure was established for child and adolescent victims of sexual violence and a database of typical cases and the experiences of networks caring for such individuals created.

456. Domestic violence prevention units have been set up in each of the eight administrative zones in the Municipality of Quito. These units come under the Unit for the Treatment and Prevention of Gender Violence and Child Abuse of the Directorate of Citizen Security, which has Equity and Justice Centres providing legal and social services and dispute mediation (except in cases of gender violence or sexual abuse) and other areas, with a technical team of professionals in various branches, by various institutions involved in the issue: the Attorney-General's Office, the Judicial Police, the Commissariat for Women, the Office for the Defence of Women's Rights of the National Police and the National Police Department for Children and Adolescents.

457. These measures show that progress has been made from complaints to proposals for specific intervention and a Government commitment has been obtained in this area. Social

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[44] CONAMU, Questionnaire to assess the implementation of the provisions of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Convention of Belém Do Pará. December 2005.

legitimacy has generated new demands: resources, training, technical assistance and higher levels of mainstreaming.

d) Labour

458. The **Gender Equity and Youth Unit** was established within the **Ministry of Labour and Employment**[45], with a view to "creating and strengthening mechanisms to ensure that employment policies on training and entry into the labour market with an emphasis on gender equality are fully mainstreamed by the Ministry of Labour and Employment and, consequently, implemented by the country's public and private institutions".[46]

459. In order to safeguard the right of working mothers to maternity leave and breastfeeding time, and to ensure that workplace harassment is eliminated, the Ministry of Labour visits companies on a regular basis. Between 2005 and 2006, the Ministry's Employment Inspectorate received over 1 000 complaints concerning violations of the rights of female employees who became pregnant or who were forced to submit negative pregnancy tests.

460. In September 2005 the Ministry of Labour and Employment adopted Ministerial Agreement No. 261 prohibiting the publication in the press of classified employment advertisements – for jobs in both the public and private sectors – that discriminate on the basis of age, sex, ethnic or racial origin, disability or for any other reason.

461. An important step in mainstreaming a gender perspective into employment policies was the development of Ecuador's first time-use survey. The aim of the time-use survey is to demonstrate the social and economic value of productive domestic work, with a view to informing the development of policies with a human rights perspective. It contains information on situations of inequality, contributes to increasing understanding of peoples' living conditions, activities and behaviours and the time they spend on particular tasks, and illustrates social dynamics and the interplay between work and family life.

e) Development

462. The Human Development Bond Cash Transfer Programme, which includes indigenous and rural women, has the greatest coverage and social investment of the programmes aimed at the population living in poverty and extreme poverty. The programme covers over 2 million Ecuadorian households and involves a conditional transfer aimed at protecting human capital through health and education. Women are the main participants in this policy because when they receive the transfer, they use it for the welfare of their children.

463. The State has also developed a proposal for channelling financial resources based on a gender perspective. This proposal led to the establishment in 2003 of a trust fund called the

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[45] This process enjoys the support of other national agencies, such as SENRES, ISP, ILDIS, INEC, SECAP and cooperation agencies such as AECI/Ministerio de Trabajo of Spain, ILO, UNIFEM and UNFPA.

[46] Source: www.mintrab.gov.ec

Programme for the Advancement of Rural Women (Promujeres) which is administered by the National Finance Corporation (CFN).

464. Through the Reimbursable Microfinance Programme, the Promujeres fund launched its operations in November 2005 in six credit institutions that are committed to the economic rights of the poorest women[47]. The fund's policies and instruments enable it to serve as a mechanism for promoting access to resources for women living in extreme poverty, establishing their independence and improving their quality of life.

465. One of the major efforts made by the State party has been the compilation of statistical information broken down by gender and the calculation of quantity and quality indicators that demonstrate gender inequalities and allow economic and social policies to be analysed and evaluated from a gender perspective, using the Integrated System of Social Indicators of Ecuador (SIISE), in which various related systems, notably the Integrated Women's System (SIMUJERES) and the Integrated Childhood System (SINIÑEZ), have been implemented.

4. The Equal Opportunities Plan: 2005-2009

466. Preparation of the second Equal Opportunities Plan (PIO) for 2005-2009 was concluded in March 2006. It was prepared through a process of consultation, participation and methodological drafting involving hundreds of women from different groups: indigenous peoples, Afro-Ecuadorians, rural women, adolescents, lesbians, national and regional organizations, sex workers, social and political leaders, local authorities and the CONAMU team. New topics were included: communication, migrant women, political participation and the environment.

467. The 2005-2009 Plan is structured according to four categories of rights that are important to various types of women and provide the rights-based focus of the Plan:

a) Promotion and protection of women's participation in society and politics, exercise of their citizenship and democratic governance;

b) Promotion and protection of the right to a life free of violence and to peace, health, sexual and reproductive rights, and access to justice;

c) Promotion and protection of cultural and intercultural rights and of the right to education, quality of life and autonomy; and

d) Promotion and protection of economic, environmental and labour rights and of the right to access financial and non-financial resources.

468. In March 2006, the President of the Republic signed Executive Decree No. 1207-A, declaring the Equal Opportunities Plan to be a State policy.

469. Since November 2005, the Ecuadorian Government, through CONAMU, has been promoting participatory preparation of the equal opportunities and gender equality bill. This

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[47] Up to August 2006, seven credit operators signed agreements to channel micro-loans to poor women in five of the country's cantons: Santa Elena, Guayaquil, Machala, Coca and Guamote.

process involved widespread participation by women's groups and local authorities. The process of drafting and adopting this bill will allow for discussion of diversity, particularly ethnic diversity, through the representation of indigenous and Afro-Ecuadorian women on the CONAMU Board. One of the bill's objectives is to ensure the allocation of significant resources for gender-related action. Although there has already been a major effort to incorporate a gender perspective into fiscal policy, this is largely dependent on the political will of the government currently in power; thus, appropriate legislation is needed in order to ensure the sustainability of gender policies.

5. Non-discrimination for disability

470. According to the household survey carried out by the National Statistics and Census Institute (INEC) in 2004, 12.14 per cent of the population of Ecuador has some form of disability. Of these 1 608 334 persons, 829 739 are women (51.6 per cent) and 778 594 are men (48.4 per cent). Hereditary and acquired diseases, problems during childbirth, infections and medical malpractice are the main causes of disability in the population aged over 5 (65 per cent). Accidents caused by disability most affect the male population aged 20-64 (19 per cent) and poor health conditions most affect women in the same age group (53 per cent).[48]

471. Children with a disability account for 1.4 per cent of Ecuador's population aged under five. Of them, 76 per cent have some deficiency and 24 per cent have some restriction on their activity. Of under-fives with restrictions, 56.7 per cent and boys and 43.3 per cent are girls. In the 5-40 age group with disabilities, 53 per cent are males and 47 per cent are females. In the over-41 age group with disabilities, 54 per cent are women and 46 per cent are men. Six per cent of Ecuadorian households have at least one member with a disability. Eight per cent of rural households have a disabled member, while the figure is 5 per cent in urban households. The provinces most affect by disability are Loja, Cañar, Bolívar and Cotopaxi, where the percentage of households having at least one member with a disability is more than four points higher than the national average.[49]

472. Article 53 of Ecuador's Constitution provides that the State is to guarantee prevention of disabilities and comprehensive care and rehabilitation of persons with a disability. It will take responsibility, together with society and the family, for their social integration and equal opportunities. The State is to take measures to guarantee that persons with a disability can use goods and services, especially in the fields of health, education, training, entering the labour market and leisure; and measures to eliminate barriers to communication as well as barriers to mobility in urban planning, architecture and access to transport.

473. The Act also obliges municipalities to adopt measures within the scope of their powers and circumscriptions, to eliminate any such barriers. Disabled persons are to have preferential treatment for obtaining loans and tax exemptions or reductions, in accordance with the law. Persons with disabilities have the right to communicate by alternative means, such as sign language, oralism, the Braille system, etc.

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[48] National Council on Disabilities, www.conadis.gov.ec, INEC survey, 2004.

[49] Ibid.

474. The **Disabilities Act** (Law 180), published in Official Gazette No. 996 of 10 August 1992 and reformed on 6 April 2001, established the **National Council on Disabilities (CONADIS)**, an independent national body reporting directly to the President's Office, with its own budget, and responsible for disability policy in Ecuador. It also has authority to defend the rights of persons with disabilities in court and to carry out investigations and coordinate actions to penalize violations of those rights. As for other similar bodies, its Board is composed of both State bodies and civil society organizations involved in disabilities, especially federations of persons with various disabilities.

475. In order to benefit under the Disabilities Act, individuals must be entered in the National Disabilities Register and obtain the identification issued by the Council upon registration (article 18). To that end, any person with a disability must be qualified as such. Persons with disabilities are qualified by the Ministry of Health and the National Institute for Children and the Family.

476. Article 19 of the Disabilities Act lays down the principal rights of persons with disabilities: accessibility to public goods and services, without barriers preventing their normal development; access to health and rehabilitation on equal terms; access to education at all levels; access to employment and remunerated activities and access to communications and transport. Article 20 of the Act grants persons with disabilities an exemption of 50 per cent of all charges for land, air, sea and rail transport, and for public performances.

477 Article 21 of the Act establishes a procedure for investigating and punishing any discriminatory act against persons with disabilities, to be carried out before a civil judge, who is to take preventive and protective measures for those affected and order the discriminatory act to cease immediately. Penalties for discriminatory acts, not involving criminal offences, are subject to fines ranging from $250 to $5 000 plus legal costs.

478. To support persons with disabilities in the exercise of their rights, particularly in a civil action against any kind of discrimination as indicated above, the National Council established the **Network for the Protection of the Rights of Persons with Disabilities**, comprising the provincial commissioners of the Office of the Ombudsman, the free legal clinics of the law faculties of the country's universities and some Bar Associations.

479. Likewise, the **Labour Code Reform Act**, published in Official Gazette No. 198 of 30 January 2006, makes it compulsory for public or private enterprises to hire disabled persons at a rate of 1 per cent of their total staff in the first year, increasing to 4 per cent by the fifth year, with respect for the principles of gender equality. The Ministry of Labour will conduct ongoing inspections of businesses and will penalize employers failing to comply with the Act.
480. The **First National Disabilities Plan** was launched in 1991 by the Ministry of Social Welfare. The **Second National Disabilities Plan**, now in force, is implemented by the National Council on Disabilities. It is implemented through the Provincial Commissions on Disabilities, which are decentralized technical and administrative community development agencies, with the task of carrying out coordinated and effective inter-institutional work for the benefit of persons with disabilities in each of the country's provinces.

481. Other associated government agencies contributing to the execution of the National Plan are: the provincial departments of the Ministries of Social Welfare, Education and Culture,

Health and Labour. In the field of education there are a number of schools and colleges specializing in health, with hospitals that have rehabilitation units for persons with disabilities.
482. Under the National Plan, CONADIS has promoted a number of programmes for persons with disabilities, especially those with limited financial means, making agreements with a number of public and private institutions for the provision of benefits such as subsidized medicines and technical assistance; soft loans for small business people with disabilities; programmes of study grants and reductions on certain kinds of taxes.

483. Other achievements of the National Plan include: the publication of architectural standards for accessibility to the physical environment; technical advice for drafting municipal bylaws on disabilities; technical and financial support for projects offering access to communications for persons with auditory and visual disabilities; strengthening of micro-enterprises and small businesses of persons with disabilities, through the provision of "**Fondo Semilla**" soft loans; funding of projects by organizations of an for persons with disabilities; strengthening of associations for persons with disabilities at local and national levels and of non-governmental organizations working for the disabled.

484. On 30 March 2007 Ecuador signed the Convention on the Rights of Persons with Disabilities and its Optional Protocol. The country played a major role in the drafting and adoption of the Convention, particularly when for three years it chaired the drafting committee in New York, involving civil society organizations throughout the whole process.

Z. Article 27

485. Article 1 of the Constitution defines Ecuador as a "sovereign, unitary, independent, democratic, **multicultural and multiethnic** social State under the rule of law". Article 83 provides that "the indigenous peoples, who describe themselves as nations with ancestral roots and the black or Afro-Ecuadorian people, are part of the single and indivisible State of Ecuador".
486. In line with this basic principle, article 84 and 85 of the Constitution recognize and guarantee the following **collective rights** of indigenous and Afro-Ecuadorian peoples settled in the country: to maintain, develop and enhance their identity and cultural, linguistic, religious, political and socio-economic identity; to retain the inalienable ownership of their common lands; to maintain and promote their biodiversity management practices; to be consulted on plans and programmes for prospecting and exploiting any non-renewable resources found on their lands and which might affect their environment or culture.

487. The Constitution also recognizes other fundamental rights of these peoples, such as: to take part in the use, usufruct, administration and conservation of any renewable natural resources found on their lands; to the collective intellectual ownership of their ancestral knowledge, and their exploitation, use and development in accordance with the law; to maintain, develop and administer their cultural and historic heritage; to have access to quality education and to have a bilingual intercultural education system; to conserve their traditional medicine systems, knowledge and practices, including the right to the protection of the ritual and sacred places, plants, animals, minerals and ecosystems of vital interest. Article recognizes and guarantees the right of the indigenous authorities to administer functions of justice in accordance with their customs, namely their customary law.

488. The State party respects and fosters the development of all languages of Ecuadorians. The official language is Spanish. Quechua, Shuar and the other ancestral languages are for

official use by the indigenous people, in accordance with the terms laid down by law. The State guarantees the bilingual intercultural education system. In the indigenous communities the language of that culture is used as a main language and Spanish as the language of intercultural relations.

489. As mentioned in paragraph 7 of these reports, in 2001, of the total population of Ecuador, there were 830 418 indigenous persons, 149 832 of whom lived in urban areas and 680 586 in rural areas. In 2001, the total population of African descent was 271 372, 178 555 of whom lived in urban areas and 92 817 in rural areas. Data from the same 2001 census reports a mestizo population numbering 9 411 890 and a white population of 1 271 051.

490. The present national average illiteracy rate for the population aged 15 and over is 8.8 per cent. Illiteracy among men is 7.1 per cent and 10.4 per cent among women. Based on a geographical analysis, the average in urban areas is 5.3 per cent and 15.5 per cent in rural areas. Illiteracy rates are 28.2 per cent in the indigenous population, 10.3 in the Afro-Ecuadorian population and 8 per cent among mestizos. The schooling index in the Afro-Ecuadorian population is 6.3 years, 3.3 years in the indigenous population and 7.4 years among mestizos. The data show higher illiteracy and a lower schooling index in the indigenous and black populations.

491. The address this issue, the State party has upgraded the **National Intercultural Bilingual Education System**, introduced in 1992, by setting up the **National Intercultural Bilingual Education Department** (DINEIB), attached to the Ministry of Education and Culture. It is responsible for developing bilingual intercultural education for indigenous children in all levels and methods. It has devised a intercultural bilingual education model in which its educational programmes focus on recovering and developing the languages of the nationalities and peoples, preparing teaching materials in each of the languages of the beneficiary peoples and training teachers in these communities. The Department is administered and directed by indigenous professionals.

492. In 1988, 4 010 teachers of 10 indigenous nationalities were working in the system in 16 provinces. For the Quechua, Hispanic and Shuar nationalities, the teachers teach in Spanish and the ancestral languages. On the other hand, for the Chachi, Achuar, Awá, Tsachila, Huaorani and Siona-Secoya nationalities, education takes place in their own ancestral languages. In 2006 there were 1 983 bilingual primary schools, in Amazonia, Sierra and Costa; 165 bilingual secondary schools in the same regions and six bilingual teacher training colleges (five public and one private).[50] Since illiteracy is highest among women, under the Intercultural Bilingual Education System, in the academic year 2004-2005, 56 410 indigenous women and girls were seen, 7 580 of whom were literate adult women; 39 550 entered primary education; 9148 adolescents have already completed secondary education and 123 higher education.

493. Regarding access by indigenous populations to media programmes in their own languages, the Ecuadorian Peoples' Radio Corporation (CORAPE network), with headquarters in Riobamba, coordinates the national network of indigenous and black community radio stations. It broadcasts programmes at national level in the ancestral languages, notably Quechua and Shuar, and employs radio operators, journalists and announcers from those communities.

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[50] Source: National Department of Intercultural Bilingual Education, March 2006.

494. In 2002, there were 10 indigenous radio stations, one for each province in which there is a large indigenous population. The radio is also used for intercultural bilingual education and for adult education, with a special focus on literacy. Furthermore, under Ecuador's National Human Rights Plan, campaigns were carried out by television (2000) and radio (2001 to the present day) of spots on the rights of indigenous peoples in the Quechua and Shuar languages. In 2004 the Ministry of Foreign Affairs also succeeded in publishing the Andean Charter for the Promotion and Protection of Human Rights in those languages.
495. The National Council for Peoples, Council for the Development of Ecuadorian Nationalities and Peoples (CODENPE) is also implementing communication projects managed directly by indigenous peoples in Sierra and Amazonia.
496. In order to address the Committee's concerns expressed in paragraph 19 of its concluding observations, apart from the constitutional norms cited above, the State has legal and institutional mechanisms designed to ensure that indigenous peoples and other ethnic groups can fully enjoy the rights, particularly with regard to preservation of their cultural identity and traditional livelihood.

497. The **Council for the Development of Ecuadorian Nationalities and Peoples (CODENPE),** an independent agency reporting directly to the President's Office, set up by Executive Decree No. 386 published in Official Gazette No. 86 of 11 December 1998, has the mission of fostering and facilitating the comprehensive, sustainable development, of the nations and peoples of Ecuador, respecting their identities, through policy-making, joint management, participation, coordination, equity and acquisition of resources, thereby helping to improve their quality of life.

498. The **Council for Afro-Ecuadorian Development (CODAE**), also an independent agency attached to the President's Office, was set up by Executive Decree No. 1747, published in Official Gazette No. 381 of 10 August 1998. Its main objective is to propose State policy to strengthen the Afro-Ecuadorian population, disseminate Afro-Ecuadorian rights, values, culture and history, and promote ethnic education.

499. In August 2004 the **Development Project for Indigenous and Black Peoples of Ecuador (PRODEPINE**) completed a project connected with the sustainable development strategy that aims to preserve the identity of the 12 nationalities and peoples of Ecuador in the country's three regions, Costa, Sierra y Amazonia. The project covered 19 of Ecuador's 22 provinces, 108 of its 213 cantons and 434 of the country's 788 rural parishes.

500. It covers a population of some 1 440 000, including 1 346 000 indigenous people and 94 000 Afro-Ecuadorians, associated with 4 748 grass-roots communities (the original target was exceeded by 57 per cent). The results of the project indicate a concentration of sources in Sierra where most of the indigenous population lives.
501. With the aim of ensuring continuity of the achievements of the Prodepine project, in January 2003 the State set up the **Indigenous Peoples' Development Fund (FODEPI)** as an agency attached to the President's Office, with social and public ends, that is administratively, financially and operationally independent. It is composed of representatives of the State and indigenous peoples, and has the capability to manage its resources. The Fund coordinates its activities with CODENPE and its goals are to develop and approve projects that use refundable resources, directed at developing indigenous communities and production, and promoting the

development of financial systems and the technical, business and financial capabilities of the indigenous peoples.

502. On 14 January 2000, the regulation was enacted for the Assistant Defender of the Indigenous Peoples, of Ecuador's Office of the Ombudsman, which has been in operation since January 2001 and is basically responsible for reviewing racial discrimination cases or violations against indigenous peoples. The unit was renamed the **National Department for the Indigenous Peoples (DINAPIN)**. Likewise, on 6 September 2000, the Office of the Ombudsman set up the **National Department for the Defence of the Afro-Ecuadorian Peoples**, based in Guayaquil with similar functions to the Indigenous Department.

503. The **National Department for the Health of Indigenous Peoples**, attached to the Ministry of Public Health, is responsible for developing an intercultural health system and recovering and disseminating indigenous medical knowledge.

504. Regarding the Committee's concern expressed in paragraph 19 of its concluding observations at the impact of oil extraction on the full enjoyment by members of indigenous groups of their traditional lands, the State would point out that regarding the handing over of land ownership rights, the National Institute for Agricultural Development (INDA) has handed over 69 986.73 hectares to 38 ancestral communities, 56 per cent of that area corresponding to black communities, 28 per cent to communities of the Chachi people, and 16 per cent the Quechua peoples of Amazonia.

505. Regarding access to an legalization of lands for the Afro-Ecuadorian communities, on 29 May 1996 the relevant title deeds were handed over to the following Afro-Ecuadorian Communes, under the ancestral lands ownership procedure:[51]

OWNERSHIP OF ANCESTRAL LANDS

COMMUNE	HECTARES	No. OF BENEFICIARY FAMILIES
Arenales	2 293.63	48
Río Onzole	10 218.66	276
Río Bogotá	1 416.30	28
La Peñita	319.00	13
Playa de Oro	10 400.00	50
TOTAL	**24 697.59**	**217**

506. To claim compensation in the event of impoverishment of the environment of the traditional lands of indigenous and Afro-Ecuadorian populations, article 84, paragraph 5 of the State Constitution provides for the collective right to be compensated for socio-environmental damage caused by plans and programmes for prospecting for and exploiting non-renewable resources to be found on their lands. Chapter 6 of the Constitution sets out the guarantees and constitutional, judicial and legal resources for that purpose. Article 43 of the **Environmental Management Act** lays down the procedure for setting compensation for environmental damage.

[51] Data from INDA, 2005.

507. A number of projects to exploit subsoil, social and environmental resources benefit indigenous and black communities in terms of improved road infrastructure, diversified and improved livestock production, new jobs, higher financial income, consolidation of a community self-management initiative, and closer involvement in State action. The Constitution provides that any State decision that may affect the environment must first satisfy the criteria of the community, which must be properly informed. The law is to guarantee community participation.

508. However, there are some oil exploitation projects on which the indigenous communities have not been consulted, particularly in Block 23, in the Sarayacu community, in the Province of Pastaza, which is being exploited by the Compañía General de Combustibles (CGC). In this connection, the State has applied provisional measures handed down by the Inter-American Court of Human Rights in its resolution of 6 July 2004 to investigate the facts alleged by the Sarayacu community and guarantee that population's right to move freely in the area of the exploitation.

509. Regarding the impact of projects for the extraction of subsoil resources on the effective enjoyment of the rights of the indigenous and black communities, it should be stressed that, as indicated in paragraphs 129 to 133 of these reports, it was necessary to legislate and regulate aspects relating to the conservation of the environment, ecosystems, prevention of environmental contamination, and sustainable development of natural resources, and to lay down requirements to be met by public and private activities affecting the environment and the establishment of nature reserves. The following are in force to that end: the **Environmental Management Act**, the **Environmental Contamination Prevention and Control Act** – regarding the protection of the air, soil and water resources – and the **Forestry and Conservation of Natural Areas and Wildlife Act** relating to the protection of nature reserves.

510. The **Criminal Code Reform Act** (Law No. 99-49), published in Official Gazette No. 2 of 25 January 2000, devotes an entire chapter to offences against the environment, laying down custodial sentences of two to four years for polluting activities that endanger human health or degrade the environment, and penalties for officials authorizing them.

511. The sentence is to be three to five years' imprisonment where: the acts referred to in the previous article damage human health or property; the damage or harm caused are irreversible; the act takes place as part of clandestine activities; or the polluting acts have a serious impact on natural resources needed for economic activity. If the polluting activity leads to the death of a person, the sentence for intentional homicide is to be applied, unless the act is classed as a more serious offence.

512. The criminal reform provides that the criminal court judge may order, as a protective measure, the immediate suspension of the polluting activity, and the permanent or temporary closure of the establishment or business concerned, without prejudice to any ruling by the competent environmental authority.

513. The Ministry of Energy and Mining, through the National Department of the Environment, is responsible for environmental matters related with oil development activities affecting ancestral indigenous peoples and settlers of areas awarded under concessions for oil exploitation.

514. The Ministry of Energy and Mining coordinates with the Ministry of the Environment to ensure that oil companies cause a minimal environmental impact, through effective monitoring of the company, full knowledge of the operating practices on the site, safer environmental practices, contingency plans in the event of ruptured pipes or spillages, and the use of environmental impact studies, The **Hydrocarbons Act** and the **Environmental Regulation governing hydrocarbon operations** enable the local population concerned to take part in that monitoring.

515. Some proceedings have been substantiated on account of environmental impacts on indigenous communities and settlers of areas earmarked for hydrocarbon activities, such as the action against the Texaco company in the New York courts, for the social and environmental impacts caused by the company over the years of operation in Ecuador. In Esmeraldas, the area known as La Prosperina 1 brought a case against Petroecuador for the environmental and social damage caused by a fire started when the oil pipeline ruptured.

516. The Ecuadorian State has carried out a number of actions designed to create spaces for direct involvement of the indigenous and Afro-Ecuadorian populations, as instruments to enable them to fully enjoy and exercise their rights. Thus, the Ecuadorian National Plan for Human Rights, adopted in 1998, specifically sets out in articles 8 and 11 the rights in these sectors and since 2003, the **Operational Plan on the Rights of Afro-Ecuadorian People** is being implemented, which was prepared and implemented with the direct involvement of the Afro-Ecuadorian communities and organizations.

517. As a result of these programmes, the National Congress is examining the Nationalities and Indigenous Peoples of Ecuador Act and the Act for bringing the exercise of the functions of the indigenous system into line with the ordinary judiciary, which would govern the constitutional provisions of articles 84 and 191. Parliament also approved the Collective Rights of Black and Afro-Ecuadorian Peoples Act, published in Official Gazette No. 275 of 22 May 2006, recognizing the rights enshrined in the Constitution in favour of blacks and setting up the **National Council for Afro-Ecuadorian Development**, as an administratively and financially independent agency composed of State institutions and civil society organizations, replacing the CODAE, referred to paragraph 504 of these reports.

518. Political participation by the indigenous and Afro-Ecuadorian population has been increasing over the past four years. According to the Supreme Electoral Tribunal, in the year 2000, 2.15 per cent of all national candidates were Afro-Ecuadorian. While in the elections of 20 October 2002, of the national total, 8 per cent of candidates standing in Costa, 1.5 per cent in Sierra and 0.5 per cent in Amazonia were Afro-Ecuadorians. Of these percentages, only 0.25 per cent of those elected at national level were Afro-Ecuadorians.[52] The percentage of indigenous population elected to public office has doubled in recent years, with the election of members of the national and regional assemblies, provincial ministers, mayors and councillors, especially in Sierra and Amazonia provinces.

519. Regarding the recognition of the rights enshrined in article 27 of the Covenant for other religious and linguistic minorities, the State has provided ample information in the paragraphs of the present consolidated reports relating to Article 18.

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[52] Data from the Supreme Electoral Tribunal.

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IV. REDRESS FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS IN ACCORDANCE WITH THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

520. In order to address the Committee's concern expressed in paragraph 20 of its concluding observations, concerning the effective implementation of the Committee's views expressed in communications Nos. 480/1991 and 481/1991 regarding the cases of Jorge Villacrés Ortega and José Luis García Fuenzalida, the State hereby provides the following information on compliance:

a) In the first case, the ruling was approved on 8 April 1997. The compliance agreement was signed on 25 February 1999. In the second case, the ruling was approved on 12 July 1996. The compliance agreement was signed on 11 July 1999. Both agreements were made between the State of Ecuador, represented by the Public Prosecutor's Office and Sister Elsie Monge, as representative of the citizens mentioned above;

b) The State made a single compensation payment of twenty-five thousand dollars to each of those affected. This compensation covered the *damnum emergens* and loss of profits and the moral damage sustained by Mr Jorge Villacrés Ortega and Mr José Luis García Fuenzalida, and was paid in full to the petitioners or their representatives in compliance with the signed agreements;

c) As for the penalty for those responsible for the violations, the Attorney-General's Office filed for an official summons by the Public Prosecutor's Office and the competent bodies of the judiciary, charging those taking part in the alleged violations with civil, criminal and administrative offences.

521. The State of Ecuador, through the Attorney-General's Office, in its desire to comply unreservedly with its obligations under the international human rights instruments, has begun interviewing all victims of human rights violations, with a view to finding amicable solutions for redressing the damage caused.